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LORD CAMPBELL'S ACTS,

FOR

THE FURTHER IMPROVING THE ADMINISTRATION OF CRIMINAL JUSTICE,

AND

THE BETTER PREVENTION OF OFFENCES.

TOGETHER WITH

THE ACT FOR THE BETTER PROTECTION OF APPRENTICES AND SERVANTS;

AND

THE ACT FOR AMENDING THE LAW RELATING TO THE EXPENSES OF PROSECUTIONS,

WITH

Notes, Observations, and Indictments.

BY

CHARLES SPRENGEL GREAVES, Esq.,

ONE OF HER MAJESTY'S COUNSEL,

&c. &c. &c.

AUGMENTUM MELIORIS ÆVI.

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PREFACE.

THIS little Book contains "The Act for the further Improving the Administration of Criminal Justice," 14 & 15 Vict. c. 100; "The Act for the better Prevention of Offences," 14 & 15 Vict. c. 19; "The Act for the better Protection of Persons under the Care and Control of others as Apprentices and Servants, and to enable the Guardians and Overseers of the Poor to institute and conduct Prosecutions in certain cases," 14 & 15 Vict. c. 11, and "The Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders in certain Cases," 14 & 15 Vict. c. 55.

To these Statutes are added explanatory Notes and Observations at the foot of such sections as seemed to require them.

A summary of the alterations in Indictments effected by "The Act for the further Improving the Administration of Criminal Justice" is given at the end of that Statute.

Precedents of Indictments for offences created by these Acts, and also some Precedents of Indictments framed according to the new enactments, have been added, with a view the better to illustrate the effect of such enactments. It is to be observed, that an alteration has been made in

the frame of these Indictments. Hitherto Indictments have followed the Latin form, which placed the party injured or murdered, the thing stolen, &c., before the verb. According to this course the present simple form of Indictment for murder would run "The jurors on their oath present that John Phelps Stephen Thomas feloniously, wilfully, and of his malice aforethought, did kill and murder"—which is hardly intelligible. I have ventured in every case to state the charge in the manner which I conceive to be the correct English manner. Thus the Indictment for murder runs, "The jurors on their oath present that John Phelps feloniously, wilfully, and of his malice aforethought, did kill and murder Stephen Thomas."

Some general observations are added, and I have there taken the opportunity of pointing out certain provisions, which appear to me extremely well calculated to improve the efficiency of the administration of criminal justice.

The clauses struck out of "The Act for the further improving the Administration of Criminal Justice," either in the House of Lords or House of Commons, are given, as they appear to me very important; and I trust may hereafter become the Law.

CHARLES S. GREAVES.

September 15, 1851.

GENERAL OBSERVATIONS.

HAVING had the honor to be entrusted with the preparation of "The Act for the further Improving the Administration of Criminal Justice," and "The Act for the Better Prevention of Offences," and having watched these bills step by step in their passage through Parliament, as well by attending the Committees upon them as otherwise, I need offer no apology for publishing this little Work, with the view of explaining the objects of these statutes and the provisions contained in them.

Both these bills underwent a most careful and anxious consideration in the House of Lords, not only by a Select Committee, but also by individual Peers. They were very attentively considered by the Lord CHANCELLOR, Lord LYNDHURST, Lord CAMPBELL, and Lord CRANWORTH, and many, if not, all of the Judges contributed their observations upon them, which were weighed with all the attention which they so well deserved. Nor ought it to be omitted that Lord DENMAN also afforded his important assistance. In the House of Commons "The Bill for Improving the Administration of Criminal Justice" was referred to a Select Committee, which comprised, amongst others, the ATTORNEY GENERALS for England and Ireland, Sir FREDERICK THESIGER, Mr. CROWDER, Mr. BAINES, Mr. EVANS, Mr. NAPIER, Mr. WORTLEY, Mr. HENLEY, and Mr. AGLIONBY, who devoted several days to a careful and attentive examination of every provision contained in it.

I make this statement for the purpose of shewing with how great deliberation these acts passed, and in the hope that whenever any question shall arise upon any clause in either of them, their provisions may meet with that attention, which statutes passed with so much circumspection so peculiarly deserve, and that such a construction may be put upon them in every case as may be best calculated to further the great objects for which they were passed.

Nor is this my only reason for mentioning the great care and attention that were bestowed upon these statutes. It is nothing but right that it should be known how deep and sincere an

interest has been taken, as well by the House of Lords and the House of Commons as by the Judges, in measures, which may affect the liberties or lives of those persons, who may unhappily become the objects of criminal proceedings. At first sight, peradventure, it might be supposed that the interests of such a portion of the community were little likely to meet with much consideration. Far otherwise, however, was the case in the present instance. Never shall I forget with how much anxiety all—Peers, Judges, Members of Parliament—laboured, perhaps I ought rather to say, vied with each other in their endeavours to accomplish one and the same object, so that whilst large improvements might be made in criminal proceedings, no provision should be adopted, which was calculated in any degree unfairly to prejudice any party charged with any offence. If any one knew after how much discussion and with how much difficulty the first clause of "The Act for the Amendment of the Administration of Criminal Justice," which confers a limited power of amendment, passed, I am convinced that, however clear his opinion might be that such a clause was imperatively required, he could not for a moment doubt that the interests of those, who might become the subjects of criminal proceedings, had never been watched over with greater care than on the present occasion.

However strong my own opinion may be that these statutes do not by any means go to the extent they ought—which opinion, I have the best reason to know, is entertained by many great and luminous minds,—yet, when I reflect that the only reason why the provisions of these acts were not extended further, was the apprehension felt by those, for whose opinions no one could fail to entertain extreme respect, that peradventure in some instances accused persons might be unfairly prejudiced, I am mightily consoled—and I do not doubt, that after these acts shall have been found to operate, as I have no doubt they will, without any unfair prejudice to any party accused, those who have watched them so narrowly, finding their apprehensions were unfounded, will be willing to lend their powerful assistance to the passing of larger and more comprehensive measures of a similar character.

The great object of "The Act for the better Administration of Criminal Justice" is, that *every criminal case should be tried on its real and intrinsic merits.*

It establishes two great principles.

First. That it is right that *wherever upon a trial a variance happens to occur in a matter of fact not evidenced by any writing,*

such variance ought to be amended. Such no doubt is the principle, upon which the first section proceeds. True it is that full scope to that principle is not given, as the power of amendment is confined to the particular cases designated, and moreover is only to be applied to those cases where the variance is not material to the merits, *and* the defendant cannot be prejudiced in his defence upon the merits by an amendment.

This principle being established, the only question for future consideration is, whether the power of amendment ought not to be extended to every variance not material to the merits, and by the amendment of which the prisoner cannot be prejudiced in his defence upon the merits. I entertain no doubt whatever that this is the only limitation that ought to be made; and, my own opinion further is that the only question as to any amendment ought to be, whether the prisoner will be prejudiced in his defence *on the merits* by the amendment or not. If the amendment will not prejudice the prisoner in his defence on the merits, I not only see no reason why it should not be made, but every reason why it should.

The other principle is, that *Indictments ought to be in the plainest and simplest form.* When an Indictment for murder has been made sufficient, which simply alleges that the prisoner feloniously, wilfully, and of his malice aforethought, killed and murdered the deceased, it will be very difficult to find any adequate reason why all other Indictments should not be reduced to an equally simple form so far as is practicable with reference to the particular offence.

This bill originally contained a clause making every Indictment good, which charged an offence in the words of the statute, which is the case now after verdict, &c., under the 7 Geo. 4, c. 64, s. 21; but this clause was struck out in the House of Lords, on the ground that it would make it unnecessary to set out any of the pretences in an Indictment for false pretences. It is by no means easy to see any good ground for holding an Indictment good after verdict, which was insufficient before verdict. The chief object of an Indictment is to specify the charge in such precise terms that the jury may know exactly the charge they have to try, and the Court may strictly confine the attention of the Jury to that charge. Now the 7 Geo. 4, c. 64, s. 21, plainly indicates that an Indictment, which follows the words of the statute, may be sufficient to enable the Jury to know the precise charge they have to try, and the Court to confine their attention to such charge. If that be so, it seems but reasonable that an Indictment, which

uses the terms of the statute creating the offence, should be sufficient for all purposes; and it must be confessed, that it is a strange anomaly that the same words, which are sufficient to create an offence, should not be sufficient to describe the same offence in an Indictment.

I cannot avoid offering a few remarks with reference to Indictments in this place. It has ever seemed to me that, upon principle, an Indictment ought merely to charge the crime in apt and plain language. To allege the means of death in murder, or the pretences in false pretences, or to set out the letter in an indictment for sending a threatening letter, seems to me against principle. The common law Indictments for burglary, robbery, larceny, &c. &c., all proceed on the right principle by merely charging the crime, not the mode, in which, or the means by which, it was effected. A reason can in some, if not in all, instances be assigned for the opposite course. Thus, the reason for stating the means of death and the wounds, &c. in murder, no doubt was, that the statute *De Coronatoribus* required coroners to inquire into these matters. So in false pretences the reason for requiring the pretences to be set out was, that the Court might judge whether the pretences were such as fell within the statute creating the offence: and the same reason prevailed in Indictments for sending threatening letters. This reason seems little satisfactory, as the Court, which tries the case, must always, whether the pretences or letter be set out or not, determine whether in point of law the false pretences or the letter fall within the meaning of the statute. And if it be said that the statement is required, in order that a Court of error may have an opportunity of determining the question, it will not be easy for those who rely upon this ground to account for the omission to state the means of committing the offence in the numerous instances where it is not now required; for if the statement of the means be necessary for the purpose of enabling a Court of error to determine whether an offence has been committed in one case, no possible reason can be assigned why it is not equally necessary in all.

Great opposition is ordinarily made to the simplification of Indictments upon the ground that it is by them that the prisoner is informed of the charge he is called upon to answer. Now any one really acquainted with criminal procedure must be well aware that to a very great extent indeed this is an entire fallacy. What takes place upon the arraignment of a prisoner, in immeasurably the greater number of instances, is this. The

Clerk of Arraigns states to the prisoner the substance of the charge in plain English, and to this he pleads; and no one can doubt that the prisoner much better comprehends the charge so stated than he would the Indictment, if it were read over to him. True it is, that every acute defender of prisoners carefully examines the Indictment, and to him it not unfrequently supplies the means of raising some technical objection to it for some defect apparent upon the face of it, or some objection on the ground of some defect or variance in the proof. The information that is really conveyed to prisoners is that which they learn before the committing magistrate, and from the copies of the depositions. No doubt there are some cases in which a defendant has not been before a magistrate; these cases are however very few, and it is to be remembered that every Court has power to order particulars of the crime charged to be delivered to the defendant, wherever he may appear to the Court to stand in need of further information. Nor can it be doubted, that in every case where there was any reasonable ground for thinking that the defendant had not sufficient knowledge of the precise charge intended to be proved against him, the Court would order particulars to be supplied to him.

Some suggestions for the amendment of criminal procedure will not, I trust, be considered inappropriate in this place. It cannot be doubted, that the great end of all criminal procedure is not the mere punishment of the offender, but the prevention of crime, and that any system, which has the greatest tendency to prevent the commission of offences, is obviously the best. Now it is plain that that system, which secures to the greatest extent the certainty of the conviction of offenders in the greatest number of cases, must have the strongest tendency to prevent the commission of crimes. If it were possible to create such a system as would secure a conviction in the case of every offence that was committed, it cannot be doubted that the number of offences would be infinitely decreased; now, although it is undoubtedly impracticable to establish so perfect a system as the one supposed, still it may be possible to form such a system as may, to a considerable extent, approximate to such a degree of perfection. That our present system is very far from being so perfect as it might be made no one can doubt, and the object of the following suggestions is to point out certain alterations in it, by which its efficiency might be very essentially increased.

The first consideration, which naturally presents itself to the mind is, supposing an offence to have been committed, is there any legal and effectual obligation incumbent on any one to in-

stitute a prosecution for such offence? It may be true that "silently to observe the commission of a felony without using any endeavour to apprehend the offender," may be a misprision, punishable by fine and imprisonment, on the ground that it is the duty of every one, who sees a felony committed, to discover it with all reasonable expedition to a magistrate. But this obligation is so imperfectly understood, and evaded with such perfect impunity, that it depends, to a very great extent, on the inclination of the party who is injured, or who sees the offence committed, whether any investigation take place at all, and, consequently, many offences are passed over without any investigation or prosecution. It appears to me that, in order to remedy this defect, it is very desirable that provision should be made that every person, who knows or has reason to suspect that an offence has been committed, should forthwith give information to some peace-officer or magistrate, in order that the case might be investigated, and that any person neglecting so to do should be made liable to a fine, not exceeding a certain amount, recoverable summarily before two magistrates. Such a provision would stimulate persons cognizant of the commission of offences to give information, and deter persons injured from abstaining from prosecuting.

The next observation that occurs is, that there is no regular system as to the mode of investigating offences suspected to have been committed and, consequently, it is very much a matter of accident whether the preliminary proceedings in any case are properly conducted. In some instances every proper step has been taken; in others the most obvious measures have been wholly omitted. Not unfrequently does it happen that a mortal injury is inflicted, and that the party has died without any dying declaration having been obtained, or any examination of the suspected parties being had in the presence of the injured party, and thus it sometimes happens that the most important evidence is lost. By this means injustice may be done as well to the accused as to the public, as the statement of the injured party might at once absolve or fix the accused as the party who committed the injury. Again, great irregularities sometimes occur in the proceedings before magistrates and coroners; and after a prisoner has been committed it frequently happens that no further inquiries are made until the trial takes place. Now, I think these defects obviously arise from the want of a superintending mind to guide and regulate the proceedings, and therefore I suggest that a public officer for a given district should be appointed, whose duty it should be to superintend and direct the

investigation and prosecution of all offences. His duty should commence as soon as he had information of the commission of any offence, and should continue till the case was brought actually to trial. He should be authorized to order the apprehension and detention of any suspected person, and to direct the constables and police in their proceedings. He should be entitled to be present and to assist at the examinations before the magistrates and coroners, and to see that the proceedings there were regularly conducted. After the committal of a prisoner, he should keep his attention alive in order to discover anything that might tend to elucidate the case, and bring it in all its proper bearings before the jury. Nor should his duty be confined to getting up a case against the accused; he ought to consider it his duty to endeavour as far as he could to ascertain whether the prisoner were really the guilty party; and this he ought to do, as well for the sake of preventing an innocent party from being improperly convicted, as for the sake of the public, as instances have sometimes occurred where the vehement but erroneous prosecution of an innocent man has given the guilty time and means to escape (*a*). Such officer ought personally to attend to all serious and important cases himself; but it would suffice that he should have the general superintendence over cases of lesser moment. In these, however, it should be his duty to look through the depositions, with a view to directing any evidence that was wanting to be supplied, and any that was superfluous to be omitted. It ought also to be part of his duty to act as prosecutor in all those cases where either there was no person who could fill that character, or where the party, from poverty or otherwise, was incapable of being such; he ought also to attend the Grand Jury for the purposes hereafter mentioned (*b*). Such an officer ought, no doubt, to be possessed of great intelligence, activity, and considerable legal knowledge in criminal matters. He ought to be appointed for a district of such extent that he could efficiently discharge his duties throughout the whole of it. In America, the District Attorney, who stands in a position similar to the officer here suggested, conducts the prosecution in Court; but as the duties I have pointed out, if properly attended to, would fully occupy the whole of the officer's time, and as no advocate ought ever to be engaged in the getting up a case, or in personal communication with the witnesses, it seems clear to me that such officer ought not to conduct the prosecution in Court. Such

(*a*) See *post*, p. ix. (*b*) See *post*, p. x.

officer ought to be paid by salary, and ought not to receive any remuneration in respect of any particular prosecution. In cases of difficulty he ought to be at liberty to apply to the Public Prosecutor for directions and advice.

The appointment of a Public Prosecutor has been often suggested, and it appears to me that such officer ought to be appointed. The depositions in every momentous case ought to be submitted to him at as early a period as reasonably may be. He should have full authority to direct any proceedings he might think fit, and the manner in which the accused should be indicted. He should be required to give information and directions to the public officer above suggested in any case where it appeared to him necessary, or he was called upon by such public officer, so to do: and it might be expedient to empower him to issue rules and directions for the guidance of such district officers and peace officers in the discharge of their duties, as by this means one and the same uniform system might be established throughout England.

It seems to me clear that one uniform system of police ought to be established throughout the whole country—until this be done it will necessarily happen that in one part there will be less security for property, and less likelihood of the detection of crime, than in another; and the inevitable consequence will be that the amount of crime will be greater in the one than in the other. As far as I have been able to ascertain, the rural police have been found very useful wherever they have been appointed in sufficient numbers to give them a fair trial. I think, therefore, they might very beneficially be appointed throughout all England, care being taken that their number be such as may secure the effective discharge of their duties throughout the whole of the district for which they are appointed. Unless this be done, it is obviously hopeless to expect that the object for which they are appointed can be attained. The great superiority that the rural police possess over the old parish constables consists, in addition to their better knowledge of their duties, in their being capable of being sent to any part of their districts at any moment, so that it is impossible for an offender to know but what he may be caught by some one of them *wherever* he may attempt to commit a crime. Care, therefore, should be taken to secure their efficiency in this respect to as great an extent as may be practicable.

Great inconvenience has arisen from county and other district boundaries. The warrant of a magistrate runs in force throughout the county for which he acts; but except in case of fresh pursuit,

in order to be executed in any other county, it must be indorsed by a magistrate of such county. Sundry instances have occurred in my experience where an offender has escaped whilst the officer has been getting the warrant indorsed. This might easily be remedied, either by making the warrant run in force throughout every county or district adjacent to the county in which it was granted, or by making it, like the warrant of a Judge of the Court of Queen's Bench, run all over England. I much prefer the latter, and in order to meet an objection that the warrant would thus run where the magistrate who granted it was unknown, I would require all warrants to be stamped by a stamp provided for that purpose, and universally used.

The borough constables appointed under the Municipal Corporation Act, 5 & 6 Wm. 4, c. 76, are properly empowered to act not only within their borough, but also within the county in which the borough is situated, and within every county being within seven miles of any part of such borough. And the rural police, by the 2 & 3 Vict. c. 93, s. 8, are also empowered to act in any county adjoining to that for which they are appointed. But the local constables appointed under the 3 & 4 Vict. c. 88, s. 16, have no such authority. It is clear to me that such authority ought to be extended to them and to all other peace officers, in order to prevent the boundaries of counties and districts operating as a means to facilitate the escape of criminals, which they have but too frequently done hitherto.

Magistrates are now at liberty to examine the witnesses for a prisoner or not, as they in their discretion think fit. Cases have repeatedly occurred within my experience where the ends of justice have been defeated by the non-examination of the prisoner's witnesses. I well remember a case where the magistrates refused to examine the witnesses for an innocent person accused of murder, who not only would have proved his innocence, but pointed attention to the real murderer, who escaped whilst the supposed murderer was being prosecuted. I also remember a burglar escaping by a fictitious *alibi*, where the imposition would have been detected had the justices examined the prisoner's witnesses when tendered to them for that purpose. Magistrates ought, in my opinion, to be compelled to take the examination of all witnesses produced on behalf of a prisoner precisely in the same way as those on behalf of the prosecution, and transmit them with the latter to the Court where the trial is to take place. This is in accordance with Lord Denman's opinion, 2 C. & K. 845, and see my observations, 2 Russ. C. & M. 900.

As to the Grand Jury my opinion is that it ought to be con-

tinued, but that it ought to have additional facilities afforded it to enable it the better to discharge its highly important duties. I have long been watching its working and procedure, and I am satisfied that a great deal of misapprehension prevails as to the causes of its failures. No institution can well be placed in a position, which is subject to greater difficulties in the proper discharge of its duties. As a general thing a case comes before the Grand Jury simply with the charge contained in the Indictment and the names of the witnesses. What the nature of the evidence in support of that charge, or the evidence that each witness is to give, is generally an entire mystery. In such a state of things it can be no matter of surprise that bills should be thrown out where they ought to be found. It is rather matter of wonder that this defect does not more frequently shew itself. I have on many occasions caused inquiries to be made of the witnesses in cases where bills have been unexpectedly ignored, and I have found that they have not been examined as to material facts by the Grand Jury at all. Nor can this excite surprise; the Grand Jury have not the depositions before them—they cannot know by intuition what each witness can prove; and the witness, if ever so honest, may think material things of no importance, and therefore not mention them, even if he have permission to tell his own story, and be not restricted to merely answering such questions as may be asked of him. As far as I have been able to ascertain, this is generally the cause why bills are improperly ignored. The remedy is clear—let the district officer I have suggested, or some other officer, attend the Grand Jury with the depositions, or a copy of them, and whilst each witness is under examination let him watch his evidence, and suggest any questions that may tend to elicit the whole of the facts within his knowledge. I rather think such a course is adopted at the Central Criminal Court, and sure am I that it would prove very advantageous, not merely in obtaining all the evidence from an honest witness, but in serving as a check against a dishonest witness keeping back designedly that which he had stated before the magistrate.

Again, I think the attendance of such an officer would be beneficial with respect to the Grand Jury itself. I have heard that it is not very uncommon for some of the Grand Jurymen to quit their room, leaving, perhaps, two or three more than a dozen proceeding with the business, and, consequently, rendering it competent for a small portion of the Grand Jury to ignore any bill, as twelve must agree to find one. And I have heard that bills have been improperly ignored in this manner. The public

officer should be empowered to require all the Grand Jury to hear the evidence, and vote as to any bill, before ignoring it.

I also think that each witness should be sworn in the Grand Jury Room immediately before giving his evidence. This is done at the Central Criminal Court, and I think at Durham. Swearing the witnesses in the Court whilst trials are going on creates noise and confusion, and the impression effected on the mind of the witness must be much weakened by waiting many hours, or, perhaps, a day, between the administration of the oath and the giving of the evidence, as is now commonly the case. Besides which, it sometimes has happened that witnesses have been examined by the Grand Jury without being sworn at all.

An important question here presents itself—ought the Grand Jury to be permitted to find any bill where the case has not been sent to trial by a magistrate? In England they may do so. In New York, if I rightly understand the new code, they can do so in no instance; but they are authorized to make a presentment, and then the Court is to send the case before a magistrate to be heard in the usual way, but whether such magistrate is merely a ministerial officer to take the depositions, and send the case for trial, or has a discretion whether he will send it to trial or not, I do not clearly perceive. There are some cases, no doubt, in which going before a magistrate is not necessary—such are indictments for non-repair of roads, bridges, and nuisances. There are also cases where a man is charged with several offences, and the magistrate thinks it sufficient to take the examination in one or two, and it afterwards is thought fitting to proceed in others. In such cases I am not aware that the power of finding a bill without going before a magistrate has ever been complained of. But there is a class of cases—perjury and conspiracy for instance—where the power has no doubt been used as a means of very great oppression, and a stop to such proceedings ought certainly to be put in some way. I would suggest that every case which is, properly speaking, a criminal case, and not merely a charge of the neglect of some legal liability, as the neglect to repair roads, bridges, &c., or the creation of some nuisance, or obstruction to some public right, ought first to be investigated before a magistrate, and that if he dismissed the charge, he should return the depositions to the Court, and that no bill should be permitted to go before the Grand Jury in such case, unless by the leave of the Court, which might be granted upon reading the depositions, affidavit of additional evidence, and so forth. In cases where the prisoner was committed on one charge, and it was desired to send others before the Grand Jury, I think the

Court ought to be invested with a discretion either to send the case for inquiry before a magistrate, or to permit a bill to be sent before the Grand Jury upon the prosecutor furnishing the prisoner with a particular of the charge intended to be relied upon, the name of the witnesses, or such other terms as to the Court in its discretion should seem fit. Clear is it to me that the dismissal of a charge by a magistrate should in no case be finally conclusive; equally clear am I that in such a case a bill ought not to be preferred without the leave of the Court, and so also in the case where no investigation has been had before a magistrate.

The American mode of procedure appears to me objectionable, as it affords a malicious prosecutor the means of injuring an innocent person to a very considerable extent, and the advantage it possesses of enabling the defendant to know what the precise charge against him is, appears to be purchased at too high a price.

I am not unaware that some of the suggestions I have made may be considered of small importance; but I would remind any one, who is inclined to that opinion, that our criminal procedure is pretty much like a chain, every link of which must be strong enough to support the weight of the body it is intended to raise, and that the crafty felon calculates upon every possibility that may occur to afford him the means of escape, and that if such persons are to be deterred from the commission of crime by the fear of punishment, such an end will only be attained by rendering it notorious that every step in the proceedings in a criminal case, however unimportant in itself, will infallibly be taken with so much care as to leave hardly any chance or possibility of escape by reason of any imperfection in it.

I am equally aware that the carrying out the suggestions I have offered would at first create some additional expense; but I am convinced that in a short time this would be fully compensated by the diminution of crime, the security of life and property, and the ultimate diminution of expense, which would result from such a system as I have pointed out, if well and efficiently put into operation (*a*).

(*a*) See also the observations as to the expenses of Prosecutions, *post*, p. 58.

AN ACT FOR FURTHER IMPROVING THE ADMINISTRATION OF CRIMINAL JUSTICE.

14 & 15 VICT. c. 100.

Royal Assent, 7th August, 1851.

WHEREAS offenders frequently escape conviction on their trials by reason of the technical strictness of criminal proceedings in matters not material to the merits of the case: and whereas such technical strictness may safely be relaxed in many instances, so as to ensure the punishment of the guilty, without depriving the accused of any just means of defence: and whereas a failure of justice often takes place on the trial of persons charged with felony and misdemeanor by reason of variances between the statement in the indictment on which the trial is had and the proof of names, dates, matters, and circumstances therein mentioned, not material to the merits of the case, and by the misstatement whereof the person on trial cannot have been prejudiced in his defence: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. From and after the coming of this act into operation, whenever on the trial of any indictment for any felony or misdemeanor there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the Court before which the trial shall be had, if it shall consider such

The Court may amend certain variances not material to the merits of the case, and by which the defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another jury.

variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof by some officer of the Court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such Court shall think reasonable; and after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred; and in case such trial shall be had at nisi prius, the order for the amendment shall be indorsed on the postea, and returned together with the record, and thereupon such papers, rolls, or other records of the Court from which such record issued as it may be necessary to amend shall be amended accordingly by the proper officer, and in all other cases the order for the amendment shall either be indorsed on the indictment or shall be engrossed on parchment, and filed, together with the indictment, among the records of the Court: provided that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such Court to respite the recognizances of the prosecutor and witnesses, and of the defendant, and his surety or sureties, if any, accordingly; in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried, at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been so postponed: provided also, that where any such trial shall be to be had before another jury the Crown and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

Note.—This is one of the most important sections in the act, and, if the power given by it be properly exercised, will tend very materially to the better administration of criminal justice. Formerly, if any variance occurred between any allegation in an indictment, and the evidence adduced in support of it, the prisoner was entitled to be acquitted. This led to much inconvenience. It caused the multiplication of counts, varying the statement in as many ways as it was possible to conceive the evidence could support, and thereby greatly increased the expense of the prosecution. It sometimes led to the entire escape of heinous offenders, for it happened in some cases that the Grand Jury were discharged before the acquittal took place; and though such

acquittal in many cases would not have operated as a bar to another indictment, yet the prosecutor chose rather to submit to the first defeat, than to prefer another indictment at a subsequent assizes; and even in some cases an acquittal took place under such circumstances that the prisoner was enabled successfully to plead it in bar to another indictment. Thus in *Sheen's case* (2 C. & P. 634), where the prisoner had been indicted for the murder of Charles William Beadle, and acquitted on the ground that the name of the deceased could not be proved, to a subsequent indictment, which charged him with the murder of Charles William, he pleaded the former acquittal, and that the deceased was as well known by the name mentioned in the one indictment as by the name mentioned in the other, and so the jury found. This case clearly shews that the preferring a new bill was not in all cases sufficient to prevent a failure of justice in consequence of a variance; and many like cases have occurred.

The provisions as to the amendment of variances in criminal cases have been gradually extended. The first statute, which introduced the power of amendment, was the 9 Geo. 4, c. 15, which empowered any Judge at Nisi Prius or any Court of Oyer and Terminer and General Gaol Delivery to amend any variance, in cases of misdemeanor, between any *matter in writing or in print*, and the recital thereof on the record. After this statute had been in operation for the full period of twenty years, and no injurious consequences had been found to arise from it, the 11 & 12 Vict. c. 46, s. 4, empowered any Court of Oyer and Terminer and General Gaol Delivery to amend any variance, *in any offence whatever*, between any *matter in writing or in print*, and the recital thereof on the record. And the provisions of this act were extended to the Sessions, as far as they are applicable to offences within their jurisdiction, by the 12 & 13 Vict. c. 45, s. 10.

As these enactments only applied to variances between matters in writing and the record, a very numerous class of variances was left unprovided for, and the first clause in this act was intended to apply to all such variances. As this section originally stood immediately after the words "persons whatsoever therein named or described," followed the general words, "or any variance between such statement and the evidence offered in proof in any other matter or thing whatsoever." These words were objected to as being too general, and struck out on that ground in the House of Lords. The words "or in the name or description of any matter or thing therein named or described," were then inserted in the Lords. A doubt subsequently arose whether in case any property were described as belonging to certain persons, and it turned out to belong to more or less in number than the persons named, an amendment could be made as the clause then stood: in other words, whether the clause warranted an amendment in the *number* of owners of property; and to avoid this difficulty, the words "or in the

ownership of any property therein named or described," were inserted. The striking out of the general words is much to be regretted, as cases precisely within the same mischief as those provided for will very probably occur.

As the clause now stands, it is limited to the particular variances therein enumerated, and not only so, but it is so cautiously framed, that whilst on the one hand it is so worded as to prevent the escape of offenders by reason of variances not material to the merits of the case, so on the other it does not permit any amendment to be made whereby the defendant may be prejudiced in his defence *upon such merits*. In every case, therefore, where a variance occurs, the Court will have to consider the following questions; 1st, whether the variance be in one of the matters specified in the section; 2ndly, whether it be "not material to the merits of the case;" and lastly, if it appear not material to the merits of the case, whether the defendant may be prejudiced by the amendment "in his defence on such merits."

The terms, "merits of the case," as applied to all ordinary criminal cases, obviously mean the substantial truth and justice of the case with reference to the guilt or innocence of the prisoner. When we say that a prisoner has been acquitted upon the merits, we mean that the jury have heard and considered all the evidence with reference to the question of the guilt or innocence of the prisoner of the crime charged, and have acquitted him on the ground that the charge was not proved. It would be a perversion of language to apply such an expression to a case where a prisoner was acquitted on the ground of a trifling variance or a technical quibble.

It may be well to observe, that a matter may well constitute some part of the merits of a case, and yet a variance as to the name or description of such matter may not be material to the merits of the case. Thus, upon the trial of an indictment for stealing an animal, the proof of the animal stolen constitutes a part of the merits of the case, and yet the description of it, as a ewe instead of a lamb, may not be in the least degree material to the merits of the case as above explained.

It is to be carefully noticed, also, that an amendment is *only* prohibited where the defendant may be prejudiced in his defence *upon the merits*, not in his defence simply. Indeed, wherever any variance occurs, which makes an amendment necessary, it may be truly said that the defendant may be prejudiced in his defence by making it, for if the amendment be not made the defendant would be entitled to be acquitted. The prejudice, therefore, to the defendant, which is to prevent an amendment, is properly confined to a prejudice in his defence *upon the merits*, which plainly means a substantial, and not a formal or technical defence to the charge made against him.

The clause applies in terms to six classes:

I. The name of any county, riding, division, city, borough,

town corporate, parish, township or place, mentioned or described in the indictment.

II. The name or description of any person or persons, or body politic or corporate, stated to be the owner or owners of any property which forms the subject of any offence charged in the indictment.

III. The name or description of any person or persons, body politic or corporate, alleged to be injured or damaged, or intended to be injured or damaged by the commission of the offence charged in the indictment.

IV. The Christian name or Surname, or both Christian name and Surname, or other description of any person or persons named or described in the indictment.

V. The name or description of any matter or thing whatsoever named or described in the indictment.

VI. The ownership of any property named or described in the indictment.

It is to be observed, that by the Interpretation Clause (sec. 30, *post*, p. 32 *a*), the term "Indictment," includes Inquisition, Information, Presentment, Plea, Replication, and other pleading, as well as a Nisi Prius Record, consequently the power of amendment extends to all.

With regard to the cases in which an amendment ought to be made or refused, as the questions whether the variance be material to the merits of the case, and whether the defendant may be prejudiced in his defence on the merits by making an amendment, are questions which must necessarily depend on the particular charge and particular circumstances of each case, it is impossible to lay down any general rule by which the Court may be guided in all cases; indeed it is very possible that the very same identical variance, which ought unquestionably to be amended in one case, ought just as clearly not to be amended in another, as it may so happen that the amendment in the one case could not possibly prejudice the prisoner in his defence on the merits, but in the other might materially prejudice the prisoner in such defence.

Cases may easily be put where no doubt can exist that the variance is not material to the merits, and that the defendant cannot be prejudiced by an amendment in his defence on the merits. For instance, a man steals a sheep in the night out of a field, being ignorant at the time of the name of the owner of the sheep; in such a case it is very difficult to conceive that the name of the owner can be material to the merits, or that the defendant can be prejudiced in his defence by the name of the owner being amended according to the proof. So also if a man were to shoot into a crowd and wound or kill an individual, the name of such individual could hardly by possibility be material. In each case, however, the Court must form its own judgment upon a consideration of the whole facts of the case, and the manner in which the variance is brought under its notice; and it may not unfrequently be material to see whether any such ques-

tion has been raised before the committing magistrate; for if the case has proceeded before the committing magistrate, without any such question being raised, that may afford some ground at least for concluding that the defendant did not consider the point material to his defence, and that it is not entitled to be so considered upon the trial.

Before determining upon making an amendment, the Court should receive all the evidence applicable to the particular point, otherwise it might happen that that which appeared to be a variance upon the evidence at one stage of the trial, might afterwards be shewn to be no variance by the evidence at a later period of the trial; and if the Court were to amend on the evidence at the earlier period, it would be obliged to direct an acquittal upon the evidence at the subsequent period, for *the clause gives no power to amend the same identical particular more than once.* Again, in order to ascertain whether the prisoner may be prejudiced in his defence by the amendment, the Court ought to look not only to the facts in evidence on the part of the prosecution at the time when the amendment is applied for, but also to the defence already set up, or intended to be set up: for which purpose it may perhaps, in some cases, be necessary to examine a witness or two on behalf of the defendant. It must be remembered that the question is one entirely for the Court, and that the Court must decide it itself. And, generally speaking, where this is the case the Court will not determine the question before it on the evidence on one side, but will permit the other side immediately to introduce any evidence that may bear upon the question, so that the whole facts relating to the particular question may be before the Court at once. Thus—to mention an analogous case—where the plaintiff proposed to put in evidence an account signed by the defendant, and the defendant proposed to exclude the account on the ground that it had been delivered to the plaintiff, an attorney, in his character of attorney for the defendant, Erle, J., held that the defendant was entitled immediately to put in a letter, and call a witness to prove that the account was so delivered, though the plaintiff's case was not closed. (*Cleave* v. *Jones*, Hereford Sum. Ass. 1851).

It must be noticed, also, that the power to amend clearly does not extend to altering the charge in the indictment from one offence to another offence. For instance, an indictment for "forging" could not be altered into an indictment for "uttering," nor an indictment for "stealing" into an indictment for "obtaining by false pretences."

Equally clear is it that the amendment ought not to be made so as to apply to a different transaction. Every offence, however simple it may be, consists of a number of particulars; it must have time, place, and its component parts, all of which together constitute one individual transaction. Now the real meaning of the clause is that, provided you keep to the same identical transaction, you may amend any such error as is mentioned in the clause as to one or

more of the particulars included in such transaction. For instance, a burglary is charged in the house of James Jones, in the parish of Winkhill, and stealing the goods of *John* Jeffs. The evidence shews that a burglary was committed in every respect as alleged, except that the goods were the property of *James* Jeffs. There an amendment would clearly be right. But suppose, instead of such a case, it was proposed to prove a burglary at another time, at another place, in another man's house, and the stealing of other goods; this clearly would not be a case for amendment. The proper mode to consider the question is this: the Grand Jury have had evidence of one transaction, upon which they found the bill; the case before the Petty Jury ought to be confined to the same transaction, but if it is, it may turn out that, either through insufficient investigation or otherwise, the Grand Jury have been in error as to some particular or other, and upon the trial the error is discovered. Now this is just the case to which the clause applies. A civil case may afford an apt illustration. The plaintiffs declared on a promissory note for 250*l.*, made by *the defendant*, dated the 9th of November, 1838, payable to the plaintiffs, or their order, *on demand;* the defendant pleaded that he did not make the note; the plaintiffs proved on the trial a *joint and several* promissory note for 250*l.*, made by the defendant *and his wife*, dated the 6th of November, payable *twelve months after date, with interest.* There was no proof of the existence of any other note. Although it was objected that there was a material variance in the substantial parts of the note, the date, the parties, and the period of its duration, it was held that the declaration was properly amended, so as to make it correspond with the note produced; for it was a mere misdescription, and it was just the case in which the Legislature intended that the discretionary power of amendment should be exercised. (*Beckett* v. *Dutton*, 7 M. & W. 157. The amendment was made under the 3 & 4 Wm. 4, c. 42, s. 23).

The following appear to be the sort of variances which are amendable: In an indictment for bigamy, a woman described as "a widow," who is proved to be unmarried, (*Rex* v. *Deeley*, R. & M. C. C. R. 303; 4 C. & P. 579), or as "Ann Gooding," where the register described her as "Sarah Ann Gooding." (*Reg.* v. *Gooding*, C. & M. 297). In an indictment for night poaching, describing a wood as "The Old Walk," its real name being "The Long Walk." (*Rex* v. *Owen*, R. & M. C. C. R. 118). In an indictment for stealing "a cow," which was "a heifer" (*Cooke's case*, 1 Leach, 105); "a sheep," which turned out to be "a lamb" (*Rex* v. *Loom*, R. & M. C. C. R. 160), or "ewe" (*Rex* v. *Puddifoot*, R. & M. C. C. R. 247): "a filly," which was "a mare" (*Reg.* v. *E. Jones*, 2 Russ. C. & M. 140); "a spade," which turned out to be the iron part, without any handle. (*Rex* v. *Stiles*, 2 Russ. C. & M. 109). So in an indictment for a nuisance, by not repairing, or by obstructing a highway, the termini of the highway might be amended. So where an indict-

ment alleges a burglary, or housebreaking, in the parish of St. Peter, in the county of W., and it appears that only part of the parish is situate in such county, the indictment might be amended. (*Reg.* v. *Brookes*, 1 C. & M. 543. *Reg.* v. *Jackson*, 2 Russ. C. & M. 801).

Such are some of the instances in which amendments would clearly be right, but it is easy to suggest other cases in which an amendment ought not to be made. Suppose, on the trial of an indictment for stealing a sheep, evidence were given of stealing a cow, or *vice versâ*, or on an indictment for stealing geese it were proposed to prove stealing fowls; these are cases in which no amendment ought to be made: it is impossible to conceive that the Grand Jury can have made such a mistake, and the offence, though in law the same, and liable to the same punishment, is obviously as different as if it were different in law, and liable to a different punishment.

Many decisions have been made by the Courts in civil cases as to the instances in which amendments ought to be made, and some of the principles laid down in those decisions may form a useful guide in questions arising under this clause, and they are therefore here introduced.

It has been well laid down by a great Judge, that the fairest test of whether a defendant can be prejudiced by an amendment is this: "Supposing the defendant comes with evidence that would enable him to meet the case as it stands on the record unamended, would the same enable him to meet it as amended?" (Per Rolfe, B., *Cooke* v. *Stratford*, 13 M. & W. 379).

If, whatever would be available as a defence under the indictment as it originally stood, would be equally so after the alteration was made, and any evidence the defendant might have would be equally applicable to the indictment in the one form as in the other, the amendment would not be one by which the defendant could be prejudiced in his defence, or in a matter material to the merits. (*Gurford* v. *Bailey*, 3 M. & G. 781). If the transaction is not altered by the amendment, but remains precisely the same, the amendment ought to be allowed. (*Cooke* v. *Stratford*, 13 M. & W. 379). But if the amendment would substitute a different transaction from that alleged, it ought not to be made. (*Perry* v. *Watts*, 3 M. & G. 549; *Brashier* v. *Jackson*, 6 M. & W. 549). And the Court will look at all the circumstances of the case to ascertain whether the transaction would be changed by the amendment. If the amendment would render it necessary to plead a different plea, the amendment ought not to be made. (*Perry* v. *Watts*, 3 M. & G. 775; *Brashier* v. *Jackson*, 6 M. & G. 549).

It was laid down in two cases of perjury, which were tried some years ago, that amendments in criminal cases ought to be made sparingly under the 9 Geo. 4, c. 15. (*Rex* v. *Cooke*, 7 C. & P. 559; *Reg.* v. *Hewins*, 9 C. & P. 786). These

cases occurred at a time when amendments in criminal cases were looked upon with great disfavour; but the opinion of the Legislature, evidenced by the 11 & 12 Vict. c. 46, s. 4, the 12 & 13 Vict. c. 45, s. 10, and the present statute, clearly is in favour of amendments being made in all cases where the amendment is not material to the merits, and the prisoner is not prejudiced by it. In civil suits, the 9 Geo. 4, c. 15, and the 3 & 4 Wm. 4, c. 42, s. 23, *being remedial acts*, have always received a liberal construction. (*Smith* v. *Brandram*, 2 Scott, N. R. 545, 2 M. & G. 244; *Smith* v. *Knoweldon*, 2 M. & G. 561; *Sainsbury* v. *Matthews*, 4 M. & W. 343); and it has been held, that the fact of an action being a harsh and oppressive proceeding on the part of a landlord, who was taking advantage of a forfeiture in order to get possession of property on which the defendant had laid out a large sum of money, was not a consideration which ought to influence a Judge against allowing an amendment; for if the amendment did not prejudice the defendant in his defence, it ought to be allowed. (*Doe* d. *Marriott* v. *Edwards*, 1 M. & Rob. 319, *Parke*, B.) In fact the Legislature has carefully specified the questions to be considered previous to making an amendment: these are, 1st, whether the variance be material to the merits of the case; and, 2ndly, whether the defendant may be prejudiced by the amendment in his defence on such merits. These are plain and simple questions, and form a certain guide for the determination of each case; and if the Courts, as they certainly ought, will only determine each case with reference to these questions alone, there can be little doubt that there will be a uniformity in the decisions upon this clause. But if, contrary to the plain intention of the Legislature, any Court shall, on the ground of any supposed hardship or otherwise, refuse to make an amendment of a variance not material to the merits, and whereby the prisoner will not be prejudiced in his defence on the merits, uncertainty of decisions will necessarily arise, and the beneficial effect of this clause be much diminished. The Courts, in considering the propriety of making an amendment, should ever remember that the great object of the statute is to cause *every case to be determined according to the very right and justice of the case upon the merits.*

The amendment must be made in the course of the trial, and certainly before the jury give their verdict, because the trial is to proceed and the jury are to give their opinion upon the amended record. (*Per* Alderson, B., *Brashier* v. *Jackson*, 6 M. & W. 549). It would be better, indeed, in all cases to make it immediately before any further evidence is given, and where the amendment is ordered in the course of the case for the prosecution it certainly should be made before the defence begins, for it is to the amended record that the defence is to be made.

It may be observed, that as the power to amend is vested entirely in the *discretion* of the Court, a case cannot be reserved under the 11 & 12 Vict. c. 78, as to the propriety

of making an amendment, as that statute only authorizes the reservation of "a question of law." If, however, a case should arise in which the question was, whether the Court had *jurisdiction* to make a particular amendment,—in other words, whether a particular amendment fell within the terms of the statute, there the Court might reserve a case for the opinion of the Judges as to that point, as that would clearly be a mere question of law.

Verdicts and judgments valid after amendments.

II. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this act, shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

Note.—This section was introduced simply to preclude the possibility of a doubt whether verdicts and judgments delivered after amendments were valid.

Records to be drawn up in amended form, without noticing the amendments.

III. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under the provisions of this act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

Note.—This section was intended to prevent any question being raised by writ of error as to any amendment that might be made. This and the last section apply not only to the amendments under sec. 1, but to those under sec. 25. These two sections originally followed sec. 25, but their position was altered by the committee in the House of Commons.

The means by which the injury was inflicted need not be specified in indictments for murder and manslaughter.

IV. In any indictment for murder or manslaughter preferred after the coming of this act into operation it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased, and it shall be sufficient in every indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased.

Note.—This section will be found to be very beneficial. The crime of murder is so frequently committed in secret, and the body so mutilated or so long concealed that it is frequently next to impossible to ascertain with accuracy what the actual cause of death was, and yet, according to the law as it existed before this statute passed, it was clearly essential to allege *and* prove some particular cause of death, unless, indeed, a count, alleging the death by causes to the jury unknown, could have been supported, which peradventure it might. In such a state of law it is easy to conceive, that whilst the jury might be satisfied beyond a doubt that the prisoner had murdered the deceased, they might be unable upon the evidence to determine by what means the murder was committed, or at least that it was committed by any of the means mentioned in the indictment. The effect of this section will be to cause every case of murder and manslaughter to be tried on its real merits, and the means of death will only be material, as shewing that the death did not arise from natural causes, and as tending to fix the prisoner with the commission of the crime.

By the interpretation clause (*post*, p. 32 *a*), this clause applies to coroners' inquisitions; they therefore may be in the same simple form as indictments for murder and manslaughter. (See the forms of indictment for murder and manslaughter, *post*, p. 86, No. 42 and 43).

V. In any indictment for forging, uttering, stealing, embezzling, destroying, or concealing, or for obtaining by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing the same or the value thereof.

Form of indictment in cases of forgery and uttering, stealing, and embezzling, or obtaining by false pretences.

Note.—This section applies as well to forged as to genuine instruments. Formerly in all cases of forgery and uttering it was essential to set out a copy of the instrument; this led to much inconvenience, and to obviate it the 2 & 3 Wm. 4, c. 123, s. 3, provided that it should be sufficient to describe any forged instrument, *in such manner as would sustain an indictment for stealing the same;* now the description of an instrument in larceny was inapplicable to a forged instrument; for in larceny it was necessary to describe a bill of exchange or promissory note, &c. as being of a certain value, and that the money secured thereby was still unpaid. This section, therefore, gets rid of this difficulty, and makes a description, either by the name by which the instrument is usually known, or by its purport sufficient. The purport of an instrument is what it appears to be on the face of it. (See the cases on this subject, 2 Russ. C. & M. 379, *et seq.*)

Any genuine instrument stolen, embezzled, destroyed or concealed, or obtained by false pretences, may in like manner be described either by its name or its purport without any further allegation.

In engraving plates, &c.

VI. In any indictment for engraving or making the whole or any part of any instrument, matter, or thing whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter, or thing by any name or designation by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument, matter, or thing.

Note.—This section was introduced in order to obviate the difficulties which had been experienced in setting out and describing the instruments referred to in it. It renders it sufficient to describe any such instrument by any name or designation by which it may usually be known. In this section the words "or by the purport thereof" were advisedly omitted, as hardly applicable to parts of instruments.

In other cases.

VII. In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.

Note.—This section is intended to apply to all cases, which are not provided for by the two preceding sections. It renders it sufficient to describe any instrument to which it applies by any name or designation by which it is usually known, or by its purport. It is to be observed also, that this section applies not merely to instruments in respect of which any offence is alleged to have been committed, but to every instrument, as to which any averment may be made in any indictment.

Intent to defraud particular persons need not be alleged or proved in cases of forgery, uttering, or false pretences.

VIII. From and after the coming of this act into operation it shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument whatsoever, or for obtaining or attempting to obtain any property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

Note.—This section applies to two matters, the statement of the intent to defraud in indictments for forgery and false pretences, and the evidence in support of such intent.

Before this act passed, it was necessary in these cases to allege that the defendant did the act charged with intent to defraud some particular individual mentioned in the indictment, and to prove that in fact the defendant did such act with intent to defraud the person so specified. This in most instances led to the multiplication of counts, alleging an intent to defraud different persons, so as to meet any view that the jury might take of the evidence, and sometimes, upon the evidence, a difficulty occurred in ascertaining whether any person in particular could be said to be intended to be defrauded. (See *Reg.* v. *Marcus*, 2 C. & K. 356; *Reg.* v. *Tuffs*, 1 D. C. C. 319). This clause is intended to obviate all such difficulties, and it renders it sufficient to allege in the indictment, that the forgery or uttering was committed, or the goods obtained, with intent to defraud, without specifying any particular person intended to be defrauded; and it likewise renders it unnecessary to prove that the defendant intended to defraud any particular person, and makes it sufficient to prove that he did the act with intent to defraud. (See the Forms of Indictment, *post*, p. 83, No. 34, and *post*, p. 84, No. 35).

A party indicted for felony or misdemeanor may be found guilty of an attempt to commit the same, and shall be liable to the same consequences as if charged with and con-

IX. And whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof: for remedy thereof be it enacted, that if on the trial of any person charged with any felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or

victed of the attempt only.

misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

No person so tried to be afterwards prosecuted for the same.

Note.—As the law existed before the passing of this act, (except in the case of the trial for murder of a child, and the offences falling within the 1 Vict. c. 85, s. 11), there was no power upon the trial of an indictment for any felony to find a verdict against a prisoner for anything less than a felony, or upon the trial of an indictment for a misdemeanor to find a verdict for an attempt to commit such misdemeanor. At the same time the general principle of the common law was, that upon a charge of felony or misdemeanor, composed of several ingredients, the jury might convict of so much of the charge as constituted a felony or misdemeanor. (*Rex* v. *Hollingberry*, 4 B. & C. 329). The reason why, upon an indictment for felony, the jury could not convict of a misdemeanor, was said to be, that thereby the defendant would be deprived of many advantages; for if he was indicted for the misdemeanor he might have counsel, a copy of his indictment, and a special jury. (*Rex* v. *Westbeer*, 2 Str. 1133; 1 Leach, 12). The prisoner is now entitled, in cases of felony, to counsel, and to a copy of the depositions, and though not entitled to a copy of the indictment, yet as a matter of courtesy his counsel is always permitted to inspect it. With regard to a special jury, in the great majority of cases a prisoner would not desire it, and it can in no case be obtained unless the indictment has been removed by *certiorari*. Very little ground, therefore, remained for objecting to the jury being empowered to find a verdict of guilty of an attempt to commit a felony upon an indictment for such felony, and the prisoner obviously gains one advantage by it, as where he is charged with a felony he may peremptorily challenge jurymen, which he could not do if indicted for a misdemeanor. No prejudice, therefore, being likely to arise to the prisoner, and considerable benefit in the administration of criminal justice being anticipated by the change, the jury are now empowered, upon the trial of any indictment for a felony to convict of an attempt to commit that particular felony, and upon the trial of any indictment for a misdemeanor to convict of an attempt to commit that particular misdemeanor.

Repeal of the 11th section of 7 Wm. 4 & 1 Vict. c. 85.

X. And whereas it is enacted by a certain act of Parliament passed in the first year of the reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws relating to Offences against the Person," that "on the trial of any person for any of the offences therein before mentioned, or for any felony whatever where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding:" and whereas great difficulties have arisen in the construction of such enactment: for remedy thereof be it enacted, that the said enactment shall be and the same is hereby repealed.

Note.—This section repeals the 11th section of the 1 Vict. c. 85, which had not only led to difficulties in determining to what cases it applied, but had been applied to cases, to which it is extremely questionable whether it was ever intended to apply. The power to convict of an attempt to commit a felony given by the last section, and the power to convict of unlawfully cutting, stabbing, or wounding, given by the 14 & 15 Vict. c. 19, s. 5, are much better calculated to prove beneficial than the repealed section.

On the trial of an indictment for robbery the jury may convict of the assault with intent to rob.

No person so tried to be afterwards prosecuted for the same.

XI. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

Note.—This clause was introduced in consequence of the case of *Reg.* v. *Reid* (2 D. C. C. R. 88). There seems no doubt that on an indictment properly framed, that is to say, charging an assault with intent to rob and a robbery, that the defendant might have been convicted of the assault with intent to rob, just in the same way as upon an indictment for burglary, charging a breaking with intent to steal and stealing, the defendant may be convicted of breaking with

intent to steal. But it was thought better to provide for this case by express enactment, in order to prevent any doubt on the matter.

Person tried for misdemeanor not to be acquitted if the offence turn out to be felony, unless the Court so direct.

XII. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

Note.—This section was introduced to put an end to all question as to whether on an indictment for a misdemeanor in case upon the evidence it appeared that a felony had been committed, the defendant was entitled to be acquitted, on the ground that the misdemeanor merged in the felony. (*Regina* v. *Neale*, 1 C. & K. 591; 1 D. C. C. 36. *Regina* v. *Button*, 11 Q. B. 929). The discretionary power to discharge the jury is given in order to prevent indictments being collusively or improperly preferred for misdemeanors, where they ought to be preferred for felonies, and also to meet those cases where the felony is liable to so much more severe a punishment than the misdemeanor that it is fitting that the prisoner should be tried and punished for the felony. For instance, if on an indictment for attempting to commit a rape, it clearly appeared that the crime of rape was committed, it would be right to discharge the jury. So if any one were to prefer an indictment for any offences respecting a railway under the 3 & 4 Vict. c. 97, instead of under the 13 & 14 Vict. c. 19, ss. 6 and 7, it would be proper—generally speaking—to discharge the jury, and order an indictment for felony to be preferred.

Person indicted for embezzlement as a clerk, &c., not to be acquitted if the offence turn out to be larceny, and *vice versâ*.

XIII. If upon the trial of any person indicted for embezzlement as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, as the

case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Note.—The distinction between embezzlement and larceny by a servant is so fine that it was thought proper by this section to prevent an acquittal in case upon the trial of an Indictment for the one it should turn out that the offence amounted in point of law to the other. The distinction between the two offences is this, if the servant received the property and converted it to his own use before it came to the possession of the master, the offence is embezzlement. If the property had come to the possession of the master, and the servant afterwards converted it to his own use, it is larceny. Thus, if a shopman received money and converted it to his own use immediately, this was embezzlement; but if he put it in the till or other depository, and afterwards abstracted it, this was larceny. *Rex* v. *Grove*, 1 R. & M. C. C. R. 447. It is somewhat singular that it should never have been decided whether upon an Indictment for larceny, the defendant might not be convicted of embezzlement; inasmuch as the 7 & 8 Geo. 4, c. 29, s. 47 enacts, that every person guilty of embezzling any property "shall be deemed to have feloniously stolen the same:" which would seem well to have warranted a conviction for embezzlement upon a count for larceny as a servant.

Upon an indictment for jointly receiving, persons guilty of separately receiving may be convicted.

XIV. If upon the trial of two or more persons indicted for jointly receiving any property it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part of such property.

Note.—Before this statute passed, if two or more receivers of stolen property were charged with a joint receipt, and it

appeared on the evidence that each received separately, the prosecutor was bound to elect as to which receiver he would proceed, and the other was acquitted; (*Rex* v. *Messingham*, 1 R. & M. C. C. R. 257); or if the verdict was taken against both, the Court of Crown Cases Reserved held that the first receiver was properly convicted, and the second not; (*Reg.* v. *Gray*, 2 D. C. C. R. 86. *Reg.* v. *Matthews*, 1 D. C. C. R. 596). And not only was this the case, but the defendant, who was so acquitted, could not be convicted upon another Indictment for receiving separately; for as he might, if the prosecutor had elected to proceed against him, have been convicted on the first Indictment, a plea of *autrefois acquit* was maintainable. (*Rex* v. *Dann*, R. & M. C. C. R. 424). This section entirely removes these difficulties.

It is, however, much to be regretted that the same clause does not extend to a charge of joint stealing. It did so when the bill came from the Lords, and this part of it was struck out by the committee in the Commons.

Separate accessaries and receivers may be included in the same indictment in the absence of the principal felon.

XV. And whereas it frequently happens that the principal in a felony is not in custody or amenable to justice, although several accessaries to such felony or receivers at different times of stolen property the subject of such felony may be in custody or amenable to justice: for the prevention of several trials be it enacted, that any number of such accessaries or receivers may be charged with substantive felonies in the same indictment, notwithstanding the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice.

Note.—Before the passing of this act, the principal and all accessaries to the felony committed by the principal and receivers of any part of the property stolen by the principal, might be tried at the same time with the principal: but in the absence of the principal, such accessaries and receivers were tried separately where their offences were separate: this led to great waste of time, as in each case the proof of the guilt of the principal had to be established, and no reason could be assigned why all accessaries to the same felony and receivers of part of the property stolen at one time, should not be tried in the same manner whether the principal was present or absent; and, therefore, this section renders accessaries and receivers triable in the absence of their principal in the same manner as if he were present.

Three larcenies from

XVI. It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct

acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them.

the same person within six months may be included in the same indictment.

Note.—It frequently happened before this statute passed, that a servant or clerk stole sundry articles of small value from his master at different times, and in such a case it was necessary to prefer separate Indictments for each distinct act of stealing, and on the trial it not seldom happened that the jury, having their attention confined to the theft of a single article of small value, improperly acquitted the prisoner on one or more Indictments. The present section remedies these inconveniences, and places several larcenies from the same person in the same position as several embezzlements of the property of the same person, so that the prosecutor may now include three larcenies of his property committed within the space of six calendar months in the same Indictment.

XVII. If upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six calendar months elapsed between the first and the last of such takings; and in either of such last mentioned cases the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six calendar months from the first to the last of such takings.

Where a single taking is charged, the prosecutor not required to elect, unless it appear that there were more than three takings, or more than six months between the first and last taking.

Note.—Formerly it very often happened, on the trial of an Indictment alleging the stealing of a number of articles at the same time, that it turned out that they had been taken at different times, in which case the prosecutor was usually compelled to elect some single taking; such election being required to be made on the spur of the moment, sometimes led to improper acquittals. The present section is intended to afford a remedy for such cases, and to place such cases in the same position as the cases provided for by the previous section. When, therefore, it appears on the trial of an Indictment for stealing a number of goods at the same time, that the goods were taken at different times, the prosecutor is not to be put to elect to proceed on any particular taking,

unless it appear that there were more than three takings, or that more than six calendar months intervened between the first and last of such takings, in which case he is to elect some takings, not exceeding three, within the period of six calendar months from the first to the last of such takings. A suggestion has been made, that in some extraordinary cases this may unduly limit the evidence on the part of the prosecution, as it is said that evidence of only three takings will be admissible. This is a fallacy; the clause confines the prosecutor to *proceeding to obtain a conviction* for three takings, but it does not at all interfere with the admissibility of any evidence that may in the opinion of the Court tend to explain the nature and character of any of the takings. If, therefore, a case should occur where a doubt arose whether the evidence as to one or more takings shewed that it was felonious, there can be no doubt that evidence of other takings would be admissible for the purpose of removing such doubt precisely in the same way as heretofore, but not otherwise. (See *Reg.* v. *Bleasdale*, 2 C. & K. 765). In fact the clause empowers the prosecutor to proceed for three takings instead of one, without in any respect otherwise altering the evidence that may be admissible.

Coin and bank notes may be described simply as money.

XVIII. In every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved, and in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.

Note.—This section was framed upon the 7 & 8 Geo. 4, c. 29, s. 48, and was intended to meet the case of *Reg.* v. *Bond*, (1 D. C. C. 517). It originally applied to money and valuable securities, the same as the section from which it was taken; but it was thought better that it should only extend to coin and the notes of the Bank of England and other banks. In these cases it is sufficient in any Indictment

whatever, where it is necessary to make any averment as to any coin or bank note, to describe such coin or note simply as money, without specifying any particular coin or note; and such an allegation will be supported by proof of any amount, although the species of coin or the nature of the note be not proved. The latter part of the clause was framed to meet two cases: first, where by false pretences a party obtained a note or coin, and returned part of the value to the person from whom it was obtained, or some other person; some doubt existing as to the correctness of the decision in *Reg.* v. *Leonard*, (1 D. C. C. 304; 2 C. & K. 514). Secondly, where a party embezzled a note or coin after having returned part of its value to a different person from the person from whom he received it, the 7 & 8 Geo. 4, c. 29, s. 48, only applying to the case where part of the value was returned "to the party delivering" the note or coin to the prisoner.

Certain provisions of 23 Geo. 2, c. 11, and 31 Geo. 3 (I.) extended.

XIX. Whereas by an act of Parliament passed in England in the twenty-third year of the reign of his late Majesty King George the Second, intituled "An Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual," and by a certain other act of Parliament made in Ireland in the thirty-first year of the reign of his late Majesty King George the Third, intituled "An Act to render Prosecutions for Perjury and Subornation of Perjury more easy and effectual, and for affirming the Jurisdiction of the Quarter Sessions in cases of Perjury," certain provisions were made to prevent persons guilty of perjury and subornation of perjury from escaping punishment by reason of the difficulties attending such prosecutions: and whereas it is expedient to amend and extend the same: be it enacted, that it shall and may be lawful for the Judges or Judge of any of the superior Courts of Common Law or Equity, or for any of her Majesty's justices or commissioners of assize, nisi prius, oyer and terminer, or gaol delivery, or for any justices of the peace, recorder or deputy recorder, chairman, or other Judge, holding any general or quarter sessions of the peace, or for any commissioner of bankruptcy or insolvency, or for any Judge or deputy Judge of any County Court or any Court of Record, or for any justices of the peace in special or petty sessions, or for any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the superior Courts shall be executed, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution; and to commit such person so directed to be prosecuted until the next session of oyer and terminer or gaol delivery for the county or other district within which such perjury was committed, unless such person

Any Court, Judge, justice, &c., may direct a person guilty of perjury in any evidence, &c. to be prosecuted;

and commit the party, unless he enter into recognizance to

appear and take his trial, and bind persons to give evidence;

shall enter into a recognizance, with one or more sufficient surety or sureties, conditioned for the appearance of such person at such next session of oyer and terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the Court without leave; and to require any person he or they may think fit to enter into a recognizance, conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid; and to give to the party so bound to prosecute a certificate of the same being directed, which certificate shall be given without any fee or charge, and shall be deemed sufficient proof of such prosecution having been directed as aforesaid; and upon the production thereof the costs of such prosecution shall and are hereby required to be allowed by the Court before which any person shall be prosecuted or tried in pursuance of such direction as aforesaid, unless such last mentioned Court shall specially otherwise direct; and when allowed by any such Court in Ireland, such sum as shall be so allowed shall be ordered by the said Court to be paid to the prosecutor by the treasurer of the county in which such offence shall be alleged to have been committed, and the same shall be presented for, raised, and levied in the same manner as the expenses of prosecutions for felonies are now presented for, raised, and levied in Ireland: provided always, that no such direction or certificate shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

and give certificate of prosecution being directed, which shall be sufficient evidence of the same.

Note.—The crime of perjury has become so prevalent of late years, and so many cases of impunity have arisen, either for want of prosecution, or for defective prosecution, that this and the following sections were introduced to check a crime, which so vitally affects the interests of the community. It was considered, that by giving to every Court and person administering oaths a power to order a prosecution for perjury at the public expense, coupled with a power of commitment in default of bail, many persons would be deterred from committing so detestable a crime, and in order to effectuate this object, the present clause was framed, and as it passed the Lords it was much better calculated to effect that object than as it now stands.

As it passed the Lords it applied to any justice of the peace. The committee in the Commons confined it to justices in petty and special sessions,—a change much to be regretted, as a large quantity of business is transacted before a single justice, or one Metropolitan or stipendiary magistrate, who certainly ought to have power to commit under this clause for perjury committed before them.

Again, as the clause passed the Lords, if an affidavit, &c., were made before one person, and used before another Judge or Court, &c., and it there appeared that perjury had been committed, such Judge or Court might commit. The clause has been so altered, that the evidence must be given, or the

affidavit, &c., made before the Judge, &c., who commits. The consequence is, that numerous cases are excluded; for instance, a man swears to an assault or felony before one justice, and on the hearing before two it turns out he has clearly been guilty of perjury, yet he cannot be ordered to be prosecuted under this clause. Again, an affidavit is made before a commissioner, the Court refer the case to the Master, and he reports that there has been gross perjury, or the Court see on the hearing of the case before them that there has been gross perjury committed, yet there is no authority to order a prosecution under this clause. So, again, a man is committed for trial on the evidence of a witness, which is proved on the trial to be false beyond all doubt, yet if such witness be not examined, and do not repeat the same evidence on the trial, the Court cannot order him to be prosecuted.

Lastly, the Court before whom any person is tried for perjury under this clause, was *bound*, as the clause originally stood, to grant the costs. The committee of the Commons inserted the words "unless such last mentioned Court shall specially otherwise direct;" so that, in point of law, as the clause now stands, it is clearly discretionary with that Court whether it will grant costs or not. However the form of the clause indicates, and it certainly was the intention of the committee of the Commons, that costs should be granted in every case *as a matter of course*, unless there were some *special and cogent reason* to prevent it; and it is to be hoped that the Courts will uniformly carry out such intention. It is perfectly idle to imagine that perjury will ever be sufficiently checked as long as it remains uncertain whether a party is to be effectively prosecuted for it or not. A prosecution for perjury under this clause stands on a very different footing from ordinary prosecutions. The Court may compel any one *against his will* to prosecute, and such prosecution necessarily imposes expenses on the prosecutor that are much greater than in ordinary cases; an attorney, if not counsel, *must* be employed to frame the Indictment and prepare the evidence. To deprive the prosecutor of his costs upon the ground that the prosecution ought not to have been ordered, would be extremely unjust, as it would be punishing one man for the error of another. The clause is silent as to what ground is to warrant a special order; the only reasonable ground would appear to be, that the prosecutor has himself been negligent, or misconducted himself in the prosecution. If such were the case, no doubt he might be justly deprived of the costs.

It is to be observed, that before ordering a prosecution under this clause the Court ought to be satisfied not only that perjury has been committed, but that there is "a reasonable cause for such prosecution." Now it must ever be remembered that two witnesses, or one witness and something that will supply the place of a second witness, are *absolutely essential* to a conviction for perjury. The Court, therefore, should not order a prosecution, unless it sees that such proof

is capable of being adduced at the trial; and as the Court has the power, it would be prudent, in every case, if practicable, at once to bind over such two witnesses to give evidence on the trial, otherwise it may happen that one or both may not be then forthcoming to give evidence.

It would be prudent also for the Court to give to the prosecutor a minute of the point, on which in its judgment the perjury had been committed, in order to guide the framer of the Indictment, who possibly may be wholly ignorant otherwise of the precise ground on which the prosecution is ordered.

It is very advisable also that where the perjury is committed in giving evidence, such evidence should be taken down in writing by some person who can prove it upon the trial, as nothing is less satisfactory or more likely to lead to an acquittal, than that the evidence of what a person formerly swore should depend entirely upon mere memory. Indeed, it may well be doubted, whether it would be proper to order a prosecution in any case under this act where there was no minute in writing of the evidence taken down at the time.

Again, it ought to be clear, beyond all reasonable doubt, that perjury has been wilfully committed before a prosecution is ordered.

Extending the 23 Geo. 2, c. 11, s. 1, to other offences, and simplifying indictments for perjury and other like offences.

XX. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding either in law or in equity, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Note.—This section extends the provisions of the 23 Geo. 2, c. 11, s. 1, which applied to indictments for perjury only, to many similar offences, which are created by sundry acts of Parliament. It, however, makes no alteration in the form of an Indictment for perjury. It must not, however, be supposed that the question of simplifying and shortening such form was not considered. A great deal of attention was paid to it, and three provisions were inserted in the original bill. 1st. It was rendered unnecessary to aver that the Court or person who administered the oath had juris-

diction so to do; 2nd, it was rendered unnecessary to aver that the matter sworn was material. The grounds of these proposed alterations were, that as perjury must always be tried before a Judge there was no danger whatever that he should ever fail to require these two matters to be proved, and that their insertion in the Indictment led to useless prolixity, and in the case of the averment of materiality it sometimes happened that the Indictment proved defective. On the other hand, it was suggested that there might be danger in omitting these averments, and especially the one as to materiality, and, consequently, these provisions were rejected. The third alteration proposed was, that it should be sufficient to aver "that the defendant falsely, wilfully, and corruptly swore, deposed, or affirmed (as the case may be) *the matter alleged* to be false, without inserting any averment to falsify such matter." And this alteration received the sanction of the House of Lords, but was struck out by the Commons. It was objected to it that the assignments of perjury shewed what particular part of the evidence, &c., was alleged to be false, and that if this alteration were made it would be competent for the prosecutor to set out the whole evidence, affidavit, or answer in Chancery, and thereby embarrass the defendant and the Court. It was answered that in practice the only part set out was the part in which the perjury consisted; that at present there was nothing to prevent a prosecutor from setting out the whole evidence, &c., and assigning perjury on every allegation in it, which would leave the defendant and the Court in the same dilemma as was suggested; and that the Court had the power, which no doubt it would exercise, of ordering a particular of the parts alleged to be false to be given to the defendant; and above all that the Court would visit any wilful attempt to embarrass with its displeasure. This provision, however, was struck out by the committee of the Commons. It has not escaped observation that the words "averring such Court or person or persons to have competent authority to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned," which occur in the 23 Geo. 2, c. 11, s. 1, are not repeated in this act. But it is conceived such omission cannot be taken to operate as a repeal of these words, especially as the clauses intended to repeal them were rejected.

Extending the 23 Geo. 2, c. 11, s. 2, as to form of indictments for subornation of perjury and other like offences.

XXI. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, wher-

ever such perjury or other offence aforesaid shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence, in manner and form aforesaid, to do and commit; and wherever such perjury or other offence aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

Note.—This section extends the 23 Geo. 2, c. 11, s. 2, which applied only to subornation of perjury, and bargaining or contracting with any person to commit perjury, to the inciting, causing, or procuring any person to commit similar offences created by divers acts of Parliament. It also makes it sufficient, wherever the perjury or other offence has actually been committed, after stating the offence of the party, who actually committed such perjury, or other offence, in the mode sanctioned by the previous section, to aver that the defendant unlawfully, wilfully, and corruptly caused and procured such person to commit such offence; and wherever such perjury or other offence has not been actually committed, it is made sufficient to set forth the substance of the offence charged against the defendant, without stating any of the matters rendered unnecessary to be stated in the case of perjury by the previous section.

On trials for perjury and subornation a certificate of the trial of the indictment on which the perjury was committed sufficient evidence of such trial.

XXII. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where such indictment was tried, or by the deputy of such clerk or other officer (for which certificate a fee of six shillings and eightpence and no more shall be demanded or taken), shall upon the trial of any indictment for perjury or subornation of perjury be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

Note.—This section is intended to prevent the necessity which now exists of drawing up a formal record of the trial of any Indictment upon which perjury has been committed. The provision is framed in accordance with the similar provision in the 7 & 8 Geo. 4, c. 28, s. 11, for proving a previous

conviction. It is to be observed, that this section is merely remedial, and will not prevent a regular record from being still admissible in evidence; and care must be taken to have such record drawn up in any case where the particular averments in the former Indictment may be essential. Thus, if the materiality of the perjury should depend in any respect upon the special statements in the former Indictment, and should not appear from the certificate given in pursuance of this section, a regular record ought to be drawn up.

XXIII. It shall not be necessary to state any venue in the body of any indictment, but the county, city, or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment; and provided also, that where an indictment for an offence committed in the county of any city or town corporate shall be preferred at the assizes of the adjoining county, such county of the city or town shall be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue.

Venue in the margin sufficient, except where local description is necessary.

Note.—This section was framed with the intention of placing the statement of venue upon the same footing in criminal cases upon which it was placed in civil proceedings by Reg. Gen. H. T., 4 Wm. 4. By this section, in all cases, except where some local description is necessary, no place need be stated in the body of the Indictment; thus, in larceny, robbery, forgery, false pretences, &c., no venue need be stated in the body of the Indictment. In such cases, before the passing of this act, although it was considered necessary to state some parish or place, it was quite immaterial whether the offence was committed there or at any other parish in the county. On the other hand, in burglary, sacrilege, stealing in a dwelling-house, &c., the place where the offence was committed must be stated in the Indictment. It was necessary so to state it before the act, and to prove the statement as alleged, and so it is still, subject ever to the power of amendment given by the first section.

Where an Indictment for an offence committed in the county of any city or town corporate is preferred at the assizes of the adjoining county, such county of a city or town corporate is to be deemed the venue, and may be stated either in the margin of the indictment, with or without the name of the adjoining county, or in the body of the Indictment, by way of venue.

What defects shall not vitiate an indictment.

XXIV. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versâ*, nor for that any person mentioned in the indictment is designated by a name of office, or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

Note.—The object of this section is to do away entirely with any objection on account of any of the formal defects therein mentioned; most of these defects were rendered unavailing after verdict, outlawry, &c., by the 7 Geo. 4, c. 64, s. 20. The present section renders such objections altogether unavailing in the following cases:

1. The want of the averment of any matter unnecessary to be proved.
2. The omission of the words "as appears by the record."
3. The omission of the words "with force and arms."
4. The omission of the words "against the peace."
5. The insertion of the words "against the form of the statute," instead of "against the form of the statutes," and *vice versâ*.
6. That any person is designated by a name of office, or other descriptive appellation, instead of his proper name.
7. Omitting to state the time, at which any offence was committed in any case where time is not of the essence of the offence.
8. Stating the time imperfectly.
9. Stating the offence to have been committed on a day subsequent to the finding of the Indictment, or on an impossible day, or on a day that never happened.
10. Want of a proper or perfect venue.
11. *Want of a proper or formal conclusion.*
12. *Want of, or imperfection in, the addition of any defendant.*
13. *Want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in*

any case where the value or price, or the amount of damage, injury, or spoil is not of the essence of the offence.

The parts in *Italics* are new, the others are taken from the clause referred to. The words "where the Court shall appear by the Indictment or Information to have had jurisdiction over the offence," which followed the words "perfect venue" in the 7 Geo. 4, c. 64, s. 20, were advisedly omitted in this clause.

XXV. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Formal objections to indictments shall be taken before jury are sworn.

Court may amend any formal defect.

Note.—Under this section all formal objections *must* be taken before the jury are sworn. They are no longer open upon a motion in arrest of judgment or on error. By the common law many formal defects were amendable (see 1 *Chitty Cr. Law*, 297, and the cases there cited), and it has been the common practice for the Grand Jury to consent, at the time they were sworn, that the Court should amend matters of form. (2 *Hawk. P. C.* c. 25, s. 98). The power of amendment, therefore, given in express terms by this section, seems to be no additional power, but rather the revival of a power that had rarely, if ever, been exercised of late years.

XXVI. So much of a certain act of Parliament passed in the sixtieth year of the reign of his late Majesty King George the Third, intituled, "An Act to prevent Delay in the Administration of Justice in Cases of Misdemeanor," as provides that "where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery, within that part of Great Britain called England, or in Ireland, having been committed to custody or held to bail to appear to answer for such offence twenty days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon, at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing

Repealing part of 60 Geo. 3 & 1 Geo. 4, c. 4, as to the traverse of indictments in cases of misdemeanor.

such indictment into his Majesty's Court of King's Bench at Westminster or in Dublin shall be delivered at such session before the jury shall be sworn for such trial," shall be and the same is hereby repealed.

Provision as to traversing indictments.

XXVII. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery: provided always, that if the Court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such Court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such Court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

Note.—This section is intended wholly to do away with traverses, which were found to occasion much injustice. A malicious prosecutor could formerly get a bill for any frivolous assault found by the Grand Jury, and cause the defendant to be apprehended during the sitting of the Court; and then he was obliged to traverse till the next sessions or assizes, as he could not compel the prosecutor to try the case at the sessions or assizes at which the bill was found. This led to the expense of the traverse book and sundry fees, which operated as a great hardship on the defendant, not unfrequently an innocent person. Again, the defendant in many instances has been able to turn his right to traverse into a means of improperly putting the prosecutor to expense and inconvenience. The intention of this section is to abolish traverses altogether, and to put misdemeanors precisely on the same footing in this respect as felonies. In felonies the prisoner has no *right* to postpone his trial, but the Court on proper grounds will always postpone the trial. Under this section, therefore, no defendant in a case of misdemeanor can insist on postponing his trial; but the Court in any case, upon proper grounds being adduced, not only may, but ought to, order the trial to be postponed. If, therefore, a witness be absent, or ill, or there has not been reasonably sufficient time for the defendant to prepare for his defence, or there exist any other ground for believing that the ends of justice will be better answered by the trial taking place at a future period, the Court would exercise a very sound discretion in postponing the trial accordingly.

As the intention of the clause is to abolish traverses altogether, no traverse books, or fees incident to traverses, ought hereafter to be allowed. One great object was to prevent

defendants being improperly saddled with costs, and all Courts *ought* to carry that object into effect as far as practicable. In any case, therefore, where the Court thinks proper to postpone the trial, the Court ought simply to order the trial to be postponed to the next sessions or assizes, as the case may be. The Indictment ought then to remain in the proper custody, and no record or traverse book should be drawn up. At the next assizes or sessions, as the case may be, the trial may take place upon the Indictment alone precisely in the same way as in the case of felony where the trial has been postponed.

Provision as to plea of *autrefois convict* or *autrefois acquit*.

XXVIII. In any plea of *autrefois convict* or *autrefois acquit* it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the indictment.

Note.—This section very properly abbreviates the form of pleas of *autrefois acquit* and *autrefois convict*, and renders it unnecessary to set forth the previous Indictment, and to make the many averments of identity and so forth which were requisite before the passing of this statute.

See the forms of these pleas, *post*, p. 88, No. 47.

Punishment for certain indictable misdemeanors.

XXIX. Whenever any person shall be convicted of any one of the offences following, as an indictable misdemeanor; that is to say, any cheat or fraud punishable at common law; any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice; any escape or rescue from lawful custody on a criminal charge; any public and indecent exposure of the person; any indecent assault, or any assault occasioning actual bodily harm; any attempt to have carnal knowledge of a girl under twelve years of age; any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition; it shall be lawful for the Court to sentence the offender to be imprisoned for any term now warranted by law, and also to be kept to hard labour during the whole or any part of such term of imprisonment.

Note.—By this section the Court is empowered to sentence the offender to be imprisoned for any term now warranted by law, and also to be kept to hard labour during

the whole or any part of such term of imprisonment, in the following cases:

1. Any cheat or fraud punishable at common law.
2. Any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice.
3. Any escape or rescue from lawful custody on a criminal charge.
4. Any public and indecent exposure of the person.
5. Any indecent assault.
6. Any assault occasioning actual bodily harm.
7. Any attempt to have carnal knowledge of a girl under twelve years of age.
8. Any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition.

By the express terms of the introductory part of this section, in order to warrant the Court in awarding hard labour, the defendant must be convicted of one of the offences mentioned in it as an indictable misdemeanor; the Indictment, therefore, must charge one of the offences specified in such terms as to bring it within this section, so that the jury may find the defendant guilty of it. In every instance (except No. 5 and No. 6) the Indictment for any of these offences will necessarily do so. But in the case of No. 5 and No. 6, the legal offence is merely an assault and battery, and though the indecency in the one case, and the actual bodily harm in the other, had been alleged in the Indictment, the Court would have had no authority to award any more severe punishment than on an Indictment for a common assault and battery: now, however, on an Indictment framed so as to shew an indecent assault in the one case, and actual bodily harm in the other, hard labour may be awarded.

The term "assault," in its proper legal signification, applies to a case where the person of the party assaulted has not been actually touched; where that has been done, a battery, properly speaking, has been committed. It is obvious, however, that in this section the term assault is used in its common acceptation as including, if not as being confined to cases where there has been a battery. "An assault occasioning actual bodily harm," plainly means a battery; and in most cases "an indecent assault" will include a battery, and it may be doubted whether there can be an indecent assault, unless the person or clothes of the party alleged to have been assaulted have been touched. It has never yet been suggested that an indecent exposure of the person, however near it might be to a female, amounted to an assault, and had there been any foundation for such a position, it could hardly have escaped notice in such cases as *Reg.* v. *Webb*, 1 D. C. C. R. 338, and *Reg.* v. *Watson*, 2 Cox C. C. 376, 2 C. & K. 933. It should seem that an exposure,

amounting to a mere solicitation of chastity, would hardly amount to an assault, which means "an attempt or offer with force and violence to do a corporal hurt to another," "accompanied with such circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against the person of another." (1 Russ. C. & M. 750). If there were no *intention*, or *attempt* to touch the person of the party, it should seem there could be no assault in point of law; but any touching of the person, however slight, in an indecent manner, against the will of the party touched, would no doubt bring the party touching within this clause. An indecent assault with intent to commit a rape is already provided for by the 9 Geo. 4, c. 31, s. 25; and any indecent conduct, to which the party to whom it was applied consented, would not amount to an assault. (*Reg.* v. *Martin*, 2 M. C. C. R. 123; *Reg.* v. *Read*, 1 D. C. C. R. 377). To these two classes, therefore, this section will not apply. But if the party were fraudulently induced to submit to indecencies, the party guilty of the fraud would be guilty of an indecent assault. (*Reg.* v. *Case*, 1 D. C. C. R. 580; *Rex* v. *Rosinski*, R. & M. C. C. R. 19; *Reg.* v. *Stanton*, 1 C. & K. 415; *Reg.* v. *Saunders*, 8 C. & P. 265; *Reg.* v. *Williams*, 8 C. & P. 286). To this class of cases, therefore, the clause is clearly applicable, and so it is also to all those cases where a man indecently applies his hand to a female against her consent, whether for the purpose of solicitation or otherwise. Nor can it be doubted that the clause includes indecent assaults upon a man or boy. See the form of Indictment for an assault occasioning actual bodily harm, *post*, p. 87, No. 45, and for an indecent assault, *post*, p. 87, No. 46.

By the 13 & 14 Vict. c. 19, s. 4, hard labour may be awarded on conviction of any grievous bodily harm; this clause extends it to any case where any actual bodily harm, however slight, has been inflicted.

The power to award hard labour under this section is purely discretionary, and the Court must in each case judge upon all the facts whether or no it be right to award hard labour.

Interpretation of terms.

XXX. In the construction of this act the word "indictment" shall be understood to include "information," "inquisition," and "presentment," as well as indictment, and also any "plea," "replication," or other pleading, and any nisi prius record; and the terms "finding of the indictment" shall be understood to include "the taking of an inquisition," "the exhibiting of an information," and "the making a presentment;" and wherever in this act, in describing or referring to any person or party, matter or thing, any word importing the singular number or

masculine gender is used, the same shall be understood to include and shall be applied to several persons and parties as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

Commencement of act.

XXXI. This act shall come into operation on the first day of September one thousand eight hundred and fifty-one.

Not to extend to Scotland.

XXXII. Nothing in this act shall extend to Scotland.

AS TO THE ALTERATIONS IN INDICTMENTS CAUSED BY THE 14 & 15 VICT. c. 100.

In addition to the observations that have been made upon each section of this statute, it may be proper to point out generally the effect produced by it upon the forms of indictment.

With regard to the *venue in the margin* the statute makes no alteration, except where an Indictment for an offence, committed in the county of any city or town corporate, is preferred at the assizes of the adjoining county, in which case such county of a city or town is to be deemed the venue, and may either be stated in the margin of the Indictment, with or without the name of the county in which the offender is to be tried, or in the body of the Indictment by way of venue. (Sec. 23, *ante*, p. 27).

The statute makes no change whatever in the place, at which any offender may be tried.

Neither does the statute make any alteration as to the name of the party indicted.

But by sec. 24, *ante*, p. 28, no Indictment is to be held insufficient "for want of or imperfection in the addition of any defendant," and, consequently, it is now unnecessary to insert the addition of any defendant.

The statute makes no alteration as to the statement of the person, against whom the offence was committed, except that no Indictment is to be held insufficient for that any person mentioned in it "is designated by a name of office or other descriptive appellation instead of his proper name," by sec. 24, *ante*, p. 28.

As to time, by sec. 24, *ante*, p. 28, no Indictment is to be held insufficient "for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the Indictment, or on an impossible day, or on a day that never happened." So that in all such Indictments as larceny, forgery, false pretences, robbery, &c., no time need be stated at all. But in such Indictments as burglary, night poaching, and the like, where time is of the essence of the offence, the time must still be stated.

As to place. In all offences, which may be called transitory and not local, no parish or place need be alleged in the body of the Indictment, but the venue in the margin is to be taken to be the venue for all the facts stated in the body of the Indictment. Where, however, local description is necessary, it must be given in the body of the Indictment. The result is that in larceny, false pretences, forgery, robbery, &c. &c., no place need be stated in the body of the Indictment; but in burglary, sacrilege, housebreaking, burning houses or other buildings, &c., the place where the offence was committed must be inserted in the body of the Indictment. (See sec. 23, *ante*, p. 27).

No Indictment by sec. 24, *ante*, p. 28, is to be held insufficient for want of the averment of any matter unnecessary to be proved.

Nor where a record is referred to, for the omission of the words "as appears by the record."

Nor "for that any person mentioned in the Indictment is designated by a name of office or other descriptive appellation, instead of his proper name."

In an Indictment for murder, by sec. 4, *ante*, p. 10, it is sufficient to aver that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased, and so in an Indictment for manslaughter it is sufficient to aver that the defendant did feloniously kill and slay the deceased.

In Indictments for forging, uttering, stealing, embezzling, destroying, or concealing, or for obtaining by false pretences, any instrument, it is sufficient, by sec. 5, *ante*, p. 11, to describe such instrument by any name or designation, by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing the same or the value thereof.

In indictments for engraving or making the whole or any part of any instrument, or for using or having the unlawful possession of any plate or other material, upon which the whole or any part of any instrument shall have been engraved or made, or for having the unlawful possession of any paper, upon which the whole or any part of any instrument shall have been made or printed, it is sufficient, by sec. 6, *ante*, p. 12, to describe such instrument by any name or designation, by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument.

In all other cases except those mentioned in sec. 5 and sec. 6, wherever it is necessary to make any averment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it is sufficient, by sec. 7, *ante*, p. 12, to describe such instrument by any name or designation, by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.

In any indictment for forging, uttering, offering, disposing of, or putting off, or for obtaining or attempting to obtain property by false pretences, it is sufficient, by sec. 8, *ante*, p. 13, to allege that the defendant did the act with intent to defraud, without

alleging the intent of the defendant to be to defraud any particular person.

With regard to perjury no alteration is made in the form of the Indictment, but the provisions of the 23 Geo. 2, c. 11, relating to perjury, are extended to sundry similar offences by sec. 20, *ante*, p. 24.

With regard to subornation of perjury the provisions of the same act are extended to similar offences, and the forms of Indictment simplified by sec. 21, *ante*, p. 25.

With respect to the statement of the value or price or amount of damage, by sec. 24, *ante*, p. 28, no Indictment is to be held insufficient "for want of the statement of the value or price of any matter or thing, or the amount of any damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence." In larceny, false pretences, robbery, &c., it is, therefore, wholly unnecessary to state the price or value of the chattel stolen or obtained. In stealing in a dwelling-house to the amount of 5*l.*, in stealing and damaging trees, &c., inasmuch as the offence depends upon the amount, the amount must be stated.

As to the conclusion, no Indictment, by sec. 24, is to be held insufficient for want of the words "against the peace," or "for want of a proper or formal conclusion."

And by the same section, no Indictment is to be held insufficient for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versâ*.

It is ever to be remembered that this is a purely remedial act; it in no instance renders it *imperative* upon any person to frame any Indictment in accordance with the provisions contained in it; and, therefore, any Indictment, which was valid before this act, will still be good, and if any case should occur, in which it may be questionable how far any particular provision of this act may be applicable, it certainly would be the wise course to frame one count at least in the form used previous to this act.

AN ACT FOR THE BETTER PREVENTION OF OFFENCES.

14 & 15 VICT. c. 19.

Royal Assent, 3rd July, 1851.

WHEREAS it is expedient to make further provision for the prevention of burglary and other offences in the night: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows: That—

Any person found by night armed, &c., with intent to break into any house and commit any felony therein, or having in his possession, without lawful excuse, any implements of housebreaking, or having his face disguised, or being found by night in any house with intent to commit any felony therein, shall be guilty of a misdemeanor.

I. If any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein; or if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any pick-lock key, crow, jack, bit, or other implement of housebreaking; or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony; or if any person shall be found by night in any dwelling-house or other building whatsoever, with intent to commit any felony therein; every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding three years.

Note.—This section is framed with a view to prevent the commission of burglaries and other felonies during the night. It applies to four cases:—

I. Where any person is found *anywhere* by night armed with any dangerous or offensive weapon or instrument whatsoever, *with intent* to break *or* enter into any dwelling-house or other building whatsoever, *and* to commit any felony therein.

This clause was advisedly framed to meet every case

where any person is found, under the circumstances specified, either upon or near to any dwelling-house or other building, or *in any other place whatsoever.*

In order to bring a person within this clause four things are necessary:—1st, the party must be found by night, that is, by the 13th section, between nine at night and six the next morning; 2ndly, he must be found armed with a dangerous or offensive weapon or instrument (*a*); 3rdly, he must have the intent to break *or* enter into some dwelling-house or building; and, lastly, he must have the intent to commit some felony in such dwelling-house or building.

This clause extends to all buildings, and includes cases where there is an intent either to break into, or to enter through an open door, open window, or other aperture, any dwelling-house or other building.

See the form of Indictment, *post*, p. 73, No. 1.

II. Where any person is found *anywhere* by night, having in his possession, without lawful excuse (the proof of which excuse is imposed upon such person), any picklock key, crow, jack, bit, or other implement of housebreaking.

In order to bring a person within this clause two things are necessary: he must be found by night as already explained, and he must have in his possession a picklock key, crow, jack, bit, or other implement of housebreaking. When these two things exist, it is then incumbent on such party to shew that he had a lawful excuse for being found at such a time, and with such an implement in his possession. It is unnecessary to shew any intent in order to bring a party within this clause. The possession, without excuse, of such implements being considered sufficient evidence of the intent.

See the form of Indictment, *post*, p. 73, No. 2.

III. Where any person is found *anywhere* by night having his face blackened or otherwise disguised, with intent to commit any felony.

In order to bring a person within this clause three things are requisite: 1st, he must be found by night as already explained; 2ndly, he must be found with his face blackened or otherwise disguised; and, lastly, he must have the intent to commit some felony, but the intent to commit *any* felony at *any* place is sufficient.

See the form of Indictment, *post*, p. 74, No. 3.

IV. Where any person is found by night in any dwelling-house or other building, with intent to commit any felony therein.

In order to bring a person within this clause three things are necessary: 1st, he must be found by night as already explained; 2ndly, he must be found in a dwelling-house or building; and, lastly, he must have an intent to commit a felony therein. The circumstances under which

(*a*) As to what are "offensive" weapons, see the cases collected, 1 *Russ. C. & M.* p. 118, and p. 474.

the person is so found, and the implements he has with him, and so forth, will form the best evidence of his intent.

See the form of Indictment, *post*, p. 74, No. 4.

The offences created by this section may be tried either at the sessions or the assizes.

Any person convicted of such misdemeanor after a previous conviction of felony or such misdemeanor, guilty of misdemeanor, &c.

Form of indictment.

Certificate of previous conviction.

II. If any person shall be convicted of any such misdemeanor as aforesaid committed after a previous conviction, either for felony or such misdemeanor as aforesaid, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be transported beyond the seas for any term not less than seven years, and not exceeding ten years, or imprisoned, with or without hard labour, for any term not exceeding three years; and in any indictment for such misdemeanor committed after a previous conviction as aforesaid, it shall be sufficient to state that the offender was at a certain time and place convicted of felony or misdemeanor against "The Act for the better Prevention of Offences, 1851," (as the case may be), without otherwise describing the previous felony or misdemeanor; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such clerk or officer, (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.

Note.—By this section, any person who has been convicted of any one of the offences against the first section, or of any felony, is liable upon a subsequent conviction for any offence against the first section to more severe punishment. The clause also provides for the form of the Indictment for such subsequent offence, and for the proof of the previous conviction in a manner similar to the case of a subsequent conviction for felony under the 7 & 8 Geo. 4, c. 28, s. 11. The time of proving such previous conviction is provided for by section 9, *post*, p. 43.

Cases within this section may be tried either at the sessions or assizes.

See the form of Indictment, *post*, p. 74, No. 5.

Persons using chloroform,

III. And whereas it is expedient to make further provision for the punishment of persons using chloroform or other stupifying

things in order the better to enable them to commit felonies: be it enacted, that if any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported for life or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

&c. in order to commit a felony, guilty of felony.

Note.—This clause is intended to prevent the administration of stupifying ingredients to persons, in order to facilitate the commission of felonies. It extends to every case where any person applies or administers, or attempts to apply or administer, any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, *with intent* thereby to enable such offender, or any other person to commit, or with intent to assist such offender or other person in committing, any felony.

In order to bring a person within this section two things must exist. There must be either an attempt to administer or apply, or an actual administration or application of chloroform, laudanum, or some other stupifying or overpowering ingredient, *and* an intent thereby to enable some person to perpetrate a felony. This clause will include all persons applying chloroform in order to commit a robbery, or to steal any property from the person of another, and it would seem to apply to any person who administers any stupifying ingredient to a female, in order to have connexion with her whilst in a state of unconsciousness. See *Reg.* v. *Camplin*, 1 Den. C. C. R. 50, and the Addenda, explaining the grounds of that decision.

See the form of Indictment, *post*, p. 75, No. 6.

The offences created by this section can only be tried at the assizes. See the 5 & 6 Vict. c. 38.

IV. And whereas it is expedient to make further provision for the punishment of aggravated assaults: be it enacted, that if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cut, stab, or wound any other person, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding three years: Provided however, that nothing herein contained shall be deemed or taken to repeal the provisions of the twenty-ninth section of the act passed

Persons inflicting grievous bodily harm guilty of a misdemeanor, and liable to three years imprisonment.

Not to repeal sec. 29 of 10 Geo. 4, c. 34.

in the tenth year of the reign of his late Majesty King George the fourth, chapter thirty-four.

Note.—This section is aimed at such injuries to the person accompanied with grievous bodily harm, as do not amount to felony. It contains two parts. The first applies to those cases where any person unlawfully and maliciously inflicts any grievous bodily harm, either with or without any instrument.

In order to bring a person within this clause, two things must concur. The person must unlawfully and maliciously inflict a bodily injury, and the injury must be such as amounts to grievous bodily harm; but it is unnecessary either that the skin should be broken, or that any instrument should be used for the purpose of inflicting the injury. The clause will therefore apply as well to all those cases so repugnant to humanity, where a nose, ear, or finger shall be maliciously bitten off, as to those cases where other grievous bodily harm has been inflicted, but no wound caused.

See the form of Indictment, *post*, p. 75, No. 7.

The second clause applies to those cases where any person unlawfully and maliciously cuts, stabs, or wounds any other person.

In order to bring a person within this clause, it must be shewn that the cut, stab, or wound was unlawfully and maliciously inflicted.

Cases within this section may be tried either at the sessions or assizes.

The act mentioned in the proviso relates to Ireland only.

See the form of Indictment, *post*, p. 75, No. 8.

On the trial of any indictment for feloniously cutting, &c., the jury may acquit of the felony, and convict of unlawfully cutting, &c.

V. If upon the trial of any indictment for any felony, except murder or manslaughter, where the indictment shall allege that the defendant did cut, stab, or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing, or wounding charged in such indictment, but are not satisfied that the defendant is guilty of the felony charged in such indictment, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing, or wounding, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanor of cutting, stabbing, or wounding.

Note.—This section empowers the jury upon the trial of any Indictment for felony, except murder or manslaughter, where the defendant is charged with stabbing, cutting, or

wounding, to acquit of the felony, and to convict of unlawfully cutting, stabbing or wounding. The clause is so framed as to apply not only to Indictments for cutting, stabbing, or wounding, with intent to murder, &c. &c., but also to such Indictments as charge a burglary and wounding, or a robbery and wounding; and the word "maliciously," which is in the previous section, is here omitted.

The punishment upon a conviction under this section is, that which is provided by the previous section.

VI. If any person shall wilfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing; or shall wilfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway; or shall wilfully and maliciously turn, move, or divert any points or other machinery belonging to any railway; or shall wilfully and maliciously make or shew, hide or remove, any signal or light upon or near to any railway; or shall wilfully and maliciously do or cause to be done any other matter or thing; with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his natural life or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

Persons wilfully placing wood, &c., on railways, taking up rails, &c., turning machinery, or shewing signals, &c., with intent to commit injuries to railway or endanger the safety of persons, guilty of felony.

Note.—This section is intended the better to secure the public travelling by railways from the wilful acts of malicious persons. It applies to five cases.

I. Any person, who wilfully and maliciously puts, places, casts, or throws upon, or across any railway any wood, stone, or other matter or thing, *with intent* to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, or to endanger the safety of any person travelling or being upon such railway.

II. Any person, who wilfully and maliciously takes up, removes, or displaces any rail, sleeper, or other matter or thing belonging to any railway, with any of the intents before mentioned.

III. Any person, who wilfully and maliciously turns, moves, or diverts any points or other machinery belonging to any railway with any of the intents before mentioned.

IV. Any person, who wilfully and maliciously makes or shows, hides, or removes any signal or light upon or near to any railway, with any of the intents before mentioned.

V. Any person, who wilfully and maliciously does or causes to be done any other matter or thing with any of the intents before mentioned.

This last clause is framed to meet every possible case that may occur and is not provided for by the previous clauses, and there can be no doubt that it would include, amongst others, any case where a person wilfully and maliciously set fire to any carriage or the goods therein with intent to destroy such carriage. (See *Reg.* v. *Harris*, 1 C. & M. 661; *Reg.* v. *Simpson*, 1 C. & M. 669).

In order to bring a person within each of these five clauses, it must be shewn that he did the act in question wilfully and maliciously, and with one or other of the intents specified. (See *Reg.* v. *Upton*, *post*, p. 92).

See the forms of Indictment, *post*, p. 75, 76, No. 9, 10, 11, 12 and 13.

The offences created by this section can only be tried at the assizes. See the 5 & 6 Vict. c. 38.

It may be well to observe that the 3 & 4 Vict. c. 97, s. 13 and 14, provided for the punishment of servants, &c., of railway companies, who (*inter alia*) wilfully or maliciously did any acts, whereby the life or limb of any person passing along or being upon the railway should or might be injured, or endangered, or the passage of any engine, carriage, or train impeded or obstructed. Such persons might either be summarily convicted before one justice, or tried at the sessions, but the greatest punishment was two years' imprisonment with hard labour. By sec. 15 of the same act persons, who wilfully did, or caused to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed upon the same, were made guilty of a misdemeanor, but the greatest punishment was two years' imprisonment with hard labour. Every one was perfectly satisfied that these provisions were quite inadequate to meet many malicious acts, that might be committed in respect of railway passengers, and therefore this and the next clause were introduced to provide a fitting punishment for offences of such a serious character.

Although such parts of the clauses of the 3 & 4 Vict. c. 97, as relate to the offences specified in this act are not in terms repealed, yet they ought never to be acted upon; for the offences being made felony and subjected to so much more severe punishment, all cases falling within this act ought to be prosecuted under it, and if any indictment were preferred under the former act when the case fell within this, no doubt the Court would order the jury to be discharged, and an Indictment for the felony to be preferred, under the 14 & 15 Vict. c. 100, s. 12, *ante*, p. 16; this being just the sort of case to which that clause is properly applicable. Whether the misdemeanor would at common law have merged in the felony need not now be considered.

If any person shall cast any wood, &c., upon any railway carriage with intent to endanger the safety of any person therein, such person to be guilty of felony, &c.

VII. If any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his natural life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

Note.—This section has an object similar to the preceding, and in order to bring a person within it, it must be shewn that he wilfully and maliciously did some one of the acts specified, and with intent to endanger the safety of some person as alleged.

The offences created by this section can only be tried at the assizes. See the 5 & 6 Vict. c. 38.

See the form of Indictment, *post*, p. 77, No. 14.

Any person wilfully setting fire to any railway station, &c., guilty of felony.

VIII. If any person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation, every such person shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his natural life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years; and if any person shall wilfully and maliciously set fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of Parliament, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding ten years nor less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years.

Note.—This section contains two clauses.

I. Any person wilfully and maliciously setting fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation.

II. Any person wilfully and maliciously setting fire to any goods or chattels being in any building, the setting fire to which is made felony by this or any other act of Parliament.

The earlier part of this section is intended to afford pro-

tection to many buildings, which before the passing of this statute were not included in any of the provisions against the crime of arson; and the latter part is intended to meet all those cases where persons, intending to set fire to buildings, actually set fire to some matter or other in such buildings, but fail, through some cause or other, in actually setting fire to such buildings themselves.

The offences created by the earlier part of this section can only be tried at the assizes. See the 5 & 6 Vict. c. 38. The offences created by the latter part of this section may be tried either at the sessions or assizes.

See the forms of Indictment, *post*, p. 77, No. 15 and 16.

Upon the trial of persons for subsequent offences under the 12 & 13 Vict. c. 11, and this act the previous conviction not to be stated to the jury or given in evidence until after a verdict of guilty of the subsequent offence, unless the defendant gives evidence of good character.

IX. And whereas provision is made in a certain act of Parliament passed in the twelfth year of the reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws in England and Ireland relative to Larceny and other Offences connected therewith," and also in this act, for the more exemplary punishment of persons who shall commit certain offences after one or more previous conviction or convictions for the like or other offences, and it is expedient to define the time of charging the jury to inquire as to such previous conviction or convictions: be it enacted, that it shall not be lawful on the trial of any person for any such subsequent offence, where a plea of not guilty shall have been entered on his behalf, to charge the jury to inquire concerning any previous conviction until they shall have inquired concerning such subsequent offence, and shall have found such person guilty of the same; and whenever in any indictment any previous conviction shall be stated, the reading of such statement to the jury shall be deferred until after such finding as aforesaid: provided that if upon the trial of any person for any such subsequent offence as aforesaid such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty shall have been returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Note.—This section regulates the time for charging the jury with, and proving a previous conviction under this act and the Larceny Amendment Act (12 & 13 Vict. c. 11), and places these cases on the same footing as cases of subsequent convictions for felony under the 6 & 7 Wm. 4, c. 11. (2 Russ. C. & M. 129).

A doubt has arisen as to the construction of this section. When a prisoner is called upon to plead to an indictment charging him with having committed one offence after he

has been convicted of a previous offence, the following courses may be adopted by him:—

1stly. He may plead guilty generally.

2ndly. He may plead guilty to the subsequent offence, and deny the previous conviction.

3rdly. He may demur to the part of the indictment which charges the subsequent offence.

4thly. He may plead not guilty to the subsequent offence, and confess the previous conviction.

5thly. He may plead not guilty generally.

It is clear that the last case is the only case in which the jury have to try both the guilt of the prisoner of the subsequent offence and his having been previously convicted, and it is to this case alone that the 6 & 7 Wm. 4, c. 111, and the present section apply. The object of both these clauses was to prevent the jury being prejudiced by knowing that the prisoner had been previously convicted at the time when they were considering whether or not he was guilty of the subsequent offence. Under the 6 & 7 Wm. 4, c. 111, the uniform course was to charge the jury with the subsequent offence, and, if they found the prisoner guilty, then to charge them with the previous conviction. The new clause was intended to cause precisely the same course to be adopted, and the clause, as originally framed, was precisely similar to the 6 & 7 Wm. 4, c. 111; but it occurred to a very learned Judge, that if a prisoner pleaded guilty to the subsequent offence, and denied the previous conviction, there was no means of proving the previous conviction against him as the clause then stood; for the clause expressly required the jury to find the prisoner guilty of the subsequent offence before they were charged with the previous conviction, and they could not try an offence of which the prisoner had pleaded guilty; and therefore he suggested the introduction of the words, "where a plea of not guilty shall have been entered on his behalf," which would confine the clause to the single case where the prisoner pleaded not guilty generally. This was accordingly done.

Where, therefore, a prisoner pleads not guilty to the whole charge, the jury must be charged, first, with the subsequent offence, and secondly, after a verdict of guilty as to such offence, with the previous conviction. And this course has been held to be right by Alderson, B., after consulting Jervis, C. J.

It may be well to observe, that the words "where a plea of not guilty shall have been entered on his behalf," were advisedly used to include, not only the case where a prisoner pleads not guilty, but also the case where such plea is entered for him under the 7 & 8 Geo. 4, c. 28, when he refuses to answer directly to the charge, &c.

Any person may apprehend persons committing offences against this act, and convey them before a justice.

X. It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any offence against the provisions of this act, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

Any person may apprehend persons committing indictable offences in the night, and convey them before a justice.

XI. And whereas doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night: for remedy thereof be it enacted, that it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

Note.—As the law existed before this statute passed, there were sundry cases, in which persons committing offences by night could only lawfully be apprehended by certain specified individuals, amongst whom peace officers and constables were sometimes omitted. The consequence was, as might naturally be expected, that resistance was frequently made by offenders, and grievous, if not mortal injuries inflicted upon persons endeavouring to apprehend such offenders: indeed many melancholy instances have occurred where death has been occasioned in a nightly fray, and the party causing such death, though found committing an offence, for which he might have been lawfully apprehended by some one, has escaped the punishment he deserved for killing a person, who honestly believed he had not only a right, but was in duty bound to apprehend him, because it turned out, upon investigation on the trial, that such person was not lawfully entitled so to apprehend, through some cause or other, of which the party killing had no knowledge at the time. This clause, with a view to remedying all such cases, authorizes any person, be he who he may, to apprehend any person found committing any felony or indictable misdemeanor in the night; and it is conceived that it will prove highly beneficial, as nothing can more strongly tend to the repression of offences than the certain knowledge that, if the party is found committing them by any one, such person may at once apprehend him.

Any person assaulting a person entitled to apprehend him to be guilty of a misdemeanor.

XII. If any person liable to be apprehended under the provisions of this act shall assault or offer any violence to any person by law authorized to apprehend or detain him, or to any person acting in his aid and assistance, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be

liable to be imprisoned, with or without hard labour, for any term not exceeding three years.

Note.—This clause was introduced to protect all persons endeavouring to apprehend offenders under the provisions of the act. In order to bring a person within this clause it must be shewn that he was found committing some offence for which he was liable to be apprehended under the provisions of this act, and that he assaulted some person attempting to apprehend or detain him, or some person acting in his aid and assistance.

These offences may be tried either at the sessions or assizes.

See the forms of Indictment, *post*, p. 78, Nos. 17, 18.

By the 9 Geo. 4, c. 31, s. 25, any person convicted of "any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence, for which he or they may be liable by law to be apprehended," may be imprisoned with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years, and may also be fined, and required to find sureties for keeping the peace. Under this provision, therefore, any person, other than the party liable to be apprehended under this act, may be punished for any assault on a person apprehending or detaining any person under this act.

XIII. The time at which the night shall commence and conclude in any offence against the provisions of this act shall be the same as in cases of burglary.

The night, in offences against this act, to be as in burglary.

Note.—By the 1 Vict. c. 86, s. 4, the night for the purpose of burglary commences at nine of the clock in the evening, and concludes at six in the morning of the next succeeding day.

XIV. In all prosecutions for any offence against the provisions of this act, it shall be lawful for the Court before which any such offence shall be prosecuted or tried to allow the expenses of the prosecution in all respects as in cases of felony.

Costs of prosecutions.

XV. Nothing in this act contained shall be deemed to repeal wholly or in part the fifth of George the Fourth, chapter eighty-three, intituled "An Act for the Punishment of idle and dis-

Nothing in this act to repeal 5 Geo. 4, c. 83.

orderly Persons and Rogues and Vagabonds, in that part of Great Britain called England, but no person shall be liable to be punished for the same offence both under the said last mentioned act and under this act."

Not to extend to Scotland.

XVI. Nothing in this act shall extend to Scotland.

AN ACT FOR THE BETTER PROTECTION OF PERSONS UNDER THE CARE AND CONTROL OF OTHERS AS APPRENTICES OR SERVANTS; AND TO ENABLE THE GUARDIANS AND OVERSEERS OF THE POOR TO INSTITUTE AND CONDUCT PROSECUTIONS IN CERTAIN CASES.

14 & 15 VICT. c. 11.

Royal Assent, 20th May, 1851.

WHEREAS it is expedient to make provision for the better protection of persons who are under the care and control of others as apprentices or servants: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same,

Persons refusing or neglecting to supply necessary food to apprentices or servants, or unlawfully assaulting them, guilty of a misdemeanor.

I. That where the master or mistress of any person shall be legally liable to provide for such person as an apprentice or as a servant, necessary food, clothing, or lodging, and shall wilfully and without lawful excuse refuse or neglect to provide the same, or where the master or mistress of any such person shall unlawfully and maliciously assault such person whereby the life of such person shall be endangered, or the health of such person shall have been or shall be likely to be permanently injured, such master or mistress shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years.

Note.—This section is obscurely worded. It seems doubtful whether the words "whereby the life of such person," &c., are applicable to the clause as to assaulting only, or to both clauses. It will be safer, therefore, in any indictment on the first clause, to have one count alleging that the life or health was endangered, &c., and another omitting that allegation.

As all persons who take part in the commission of a misdemeanor are principals, it should seem that a wife, who co-operated with her husband in committing any offence within this section, would be liable to be prosecuted and punished in the same manner as her husband, provided her co-operation were such as to shew that she did not act under the coercion of her husband. (See 1 Russ. C. & M. 18, *et seq.* *Reg.* v. *Moland*, 2 M. C. C. R. 276. *Reg.* v. *Clayton*,

1 C. & K. 128. *Rex* v. *Douglas*, R. & M. C. C. R. 480. *Reg.* v. *Wright*, 9 C. & P. 754). And, on the same ground, any servant or other who co-operated with a master or mistress in committing any such offence, would also seem to be equally liable to punishment.

See the forms of Indictment, *post*, pp. 78, 79, Nos. 19, 20.

It is very much to be regretted that this clause did not include parents and others having the custody and maintenance of young children.

Costs of prosecution.

II. That the costs and expenses of the prosecution of any such misdemeanor as aforesaid may be allowed and ordered by the Court before which the indictment shall be tried, in like manner as the costs of the prosecution in certain cases of misdemeanor under the act of the seventh year of the reign of King George the Fourth, chapter sixty-four, or may be allowed and ordered by the Court of Queen's Bench in case the indictment shall have been removed into that Court, to be paid by the treasurer of the county or other officer who would have been liable to pay under the order of the Court in which, but for such removal, the indictment would have been tried.

Note.—A question may arise on this section whether the costs of attending before the examining magistrate can be allowed. At the time this statute passed it is clear they could not; but since it passed the 14 & 15 Vict. c. 55, has repealed the clause of the 7 Geo. 4, c. 64, s. 23, which provided that in cases of misdemeanor the power of ordering the payment of expenses and compensation should not extend to the attendance before the examining magistrate; and it should, therefore, seem that the costs of attending before the examining magistrate may be allowed in these cases.

A register to be kept of young persons hired or taken as servants from any workhouse.

III. That the guardians of every union and of every separate parish under the management of a board of guardians, and the overseers of every parish not in union or under the management of a board of guardians, shall provide and keep a book or books, and shall cause to be registered therein the name of every young person under the age of sixteen who shall hereafter be hired or taken as a servant from the workhouse of such union or parish, together with the several other particulars specified in the schedule hereunto annexed; and every such entry shall be signed by the presiding chairman of such board of guardians at an ordinary meeting thereof, or by some one of such overseers; provided that nothing herein contained shall be taken to supersede or affect the obligation to keep such register of poor children apprenticed by overseers or guardians as is required by the statute of the forty-second year of King George the Third, chapter forty-six, and the statute of the eighth year of Queen Victoria, chapter one hundred and one.

Not to supersede obligation to keep register as required by 42 Geo. 3, c. 46, and 7 & 8 Vict. c. 101.

Note.—This is an extremely proper provision, and will form a very useful means of putting into exercise the provisions of the next section. The keeping of the register is necessarily confined to persons hired or taken as servants *after* the act, but the next section is not so confined.

Young persons hired from workhouses or bound out as pauper apprentices to be visited periodically by officer of guardians or overseers.

IV. That where any young person under the age of sixteen shall have been or shall be hired or taken as a servant from the workhouse of any union or parish, or shall have been or shall be bound out as an apprentice by the guardians of any union, or the guardians or overseers of any parish, it shall be lawful for such guardians or overseers respectively, and they are hereby *required*, so long as such young person shall be under the age of sixteen, and shall be known to them to reside as servant or apprentice in the same service, into which such young person shall have so gone as a servant from such workhouse or as such apprentice, within such union or parish respectively, or within five miles of any part of such union or parish, to cause the relieving officer, or, where there is no relieving officer, then some other officer duly authorized for the purpose, to visit such young person at least twice in every year, and to report to them in writing whether he has found reason to believe that such young person is not supplied with necessary food, or is subjected to cruel or illegal treatment in any respect.

Note.—This section applies not only to servants and apprentices becoming such after the passing of the act, but to such as became so before the act and are still under sixteen years of age.

The words of the clause are plainly *imperative*, and if any guardian or other officer, to whom the section applies, were wilfully to neglect to cause any servant or apprentice to be visited as the clause directs, no doubt such guardian or other officer would be liable to indictment for such wilful neglect.

As to young persons hired or bound to masters residing at a distance from unions or parishes.

V. That where any young person under the age of sixteen shall hereafter be hired or taken as a servant from the workhouse of any union or parish, or shall be bound out as an apprentice by the guardians of any union, or by the guardians or overseers of any parish, and the residence of the master or mistress shall be more than five miles from any part of such union or parish, then a written notice of such hiring, taking, or binding, specifying the name and age of the apprentice or servant, and the name, description, and residence of such master or mistress, *shall* be forthwith sent from such guardians or overseers to the guardians or overseers of the union or parish in which such

master or mistress shall reside; and thereupon it shall become *the duty* of such last mentioned guardians or overseers to cause the particulars contained in such notice to be registered in some book or books, to be provided by them for the purpose, together with the name of the union or parish from which such notice shall have been received; and such last mentioned guardians or overseers *shall* cause such young person to be visited as frequently and in the same manner in all respects as if such young person had been hired or taken from their own workhouse, or had been bound out as an apprentice by themselves.

Note.—This section applies only to servants and apprentices becoming such after the act.

The words of this section are also plainly *imperative*, and if any guardian or other officer were wilfully to neglect to perform the duty required of him by this section, he would clearly be liable to indictment for such wilful neglect.

Guardians and overseers authorized and required to prosecute in certain cases.

VI. That where any complaint shall be made of an offence against this act, or of any bodily injury inflicted upon any poor person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony or an attempt to commit a felony, or an assault with intent to commit a felony, and two justices of the peace before whom the examination is taken shall certify under their hands that they deem it necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or of the parish, or where there are no guardians by the overseers of the parish, in which the offence shall have been committed, such guardians or overseers, as the case may be, shall, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians, or upon any one of such overseers, conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of the Court trying the indictment, or of the Court of Queen's Bench), out of the common fund of the union, or out of the funds in the hands of the guardians or overseers (as the case may be) of such parish.

Costs of prosecution.

Note.—This section applies to the following cases:—

1st. Any offence against this act.

2ndly. Any bodily injury, inflicted upon any poor person under the age of sixteen years, amounting in point of law to a felony, or an attempt to commit a felony.

3rdly. An assault with intent to commit a felony.

In any of these cases, if two justices of the peace certify that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians or overseers, it is to be so conducted, and the costs reasonably incurred, so far as they are not allowed by the Court, are to be paid out of the common fund of the union, &c.

VII. That in the case of a union or parish under a board of guardians the clerk or some other officer of such union or parish, and in the case of a parish not under a board of guardians one of the overseers thereof, may, if such two justices of the peace before whom the examination is taken shall deem it necessary for the purposes of public justice and shall certify as hereinbefore mentioned, be bound over to prosecute. Justices empowered to bind over officer of guardians or an overseer to prosecute.

VIII. That the words "guardians," "union," "overseers," "justice of the peace," "officer," "poor," "parish," and "workhouse," used in this act, shall be construed in like manner as in the act of the fifth year of the reign of King William the Fourth, chapter seventy-six. Interpretation of terms.

Note.—The act referred to is "The Poor Law Amendment Act," 4 & 5 Wm. 4, c. 76, s. 109.

IX. That this act shall extend only to England and Wales. Extent of act.

SCHEDULE.

FORM OF REGISTER.

Name of Child.	Age.	Date of hiring or taking as Servant.	Name of Master or Mistress.	Trade or other description of Master or Mistress.	Residence of Master or Mistress.

AN ACT TO AMEND THE LAW RELATING TO THE EXPENSES OF PROSECUTIONS, AND TO MAKE FURTHER PROVISION FOR THE APPREHENSION AND TRIAL OF OFFENDERS, IN CERTAIN CASES.

14 & 15 VICT. c. 55.

Royal Assent, 1st August, 1851.

7 Geo. 4, c. 64.

WHEREAS by the act of the seventh year of King George the Fourth, chapter sixty-four, certain provisions were made relating to the allowance of costs, expenses, and compensations to prosecutors and witnesses in cases of prosecutions for felonies and certain misdemeanors therein mentioned, and the regulation and ascertaining of such costs and expenses, and relating to the allowance of compensation to persons who may have been active in the apprehension of offenders or persons charged with offences; and provisions have been made by other acts relating to costs, expenses, and compensations in cases of prosecutions in respect of the offences therein mentioned: And whereas it is expedient to amend the law relating to costs, expenses, and compensations in cases of criminal prosecutions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that—

So much of 7 Geo. 4, c. 64, s. 23, as to expenses of attendance before examining magistrate, &c., repealed.

I. So much of section twenty-three of the said act of the seventh year of King George the Fourth as provides that in cases of misdemeanor the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate, shall be repealed.

Note.—This section effects an important improvement. Every criminal offence, properly so called, affects the welfare of the public, and as every prosecution of such an offence is, or ought to be carried on for the benefit of the public, the public, who reap the benefit, ought to bear the expense of the prosecution. Now, the costs of the proceedings before the committing magistrate, form no inconsiderable portion of the whole costs of the prosecution, and such costs ought therefore to be allowed.

Power of Courts to allow expenses in prosecutions for certain mis-

II. All the provisions of the said act of the seventh year of King George the Fourth, as amended by this act, authorizing and empowering Courts to order payment of costs and expenses, and compensation for trouble and loss of time, in cases of the several

misdemeanors enumerated in section twenty-three of the said act of King George the Fourth, and concerning orders for payment of such costs, expenses, and compensation, and the payment thereof, and all the provisions of any other act for, concerning, or applicable to the payment of such costs, expenses, and compensation in cases of the said misdemeanors, shall extend and be applicable in the case of any of the misdemeanors hereinafter mentioned; namely, unlawfully and carnally knowing and abusing any girl being above the age of ten years and under the age of twelve years; unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with any felony, or to indict any person of any felony; conspiring to commit any felony.

demeanors extended to other misdemeanors.

Note.—This section extends the power of granting costs to the following misdemeanors:—

1. Unlawfully and carnally knowing and abusing any girl above the age of ten years, and under the age of twelve years.
2. Unlawfully taking or causing to be taken any unmarried girl, under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.
3. Conspiring to charge any person with any felony, or to indict any person of any felony.
4. Conspiring to commit any felony.

III. And whereas by an act of the ninth year of King George the Fourth, chapter thirty-one, it is enacted, that where any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence; and it is by the said act provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of the said act: And whereas it is expedient that Courts before whom such indictments shall be tried shall have power to order payment of costs to parties so bound by recognizance to prosecute or give evidence: Be it enacted, that in every case of assault so brought before such justices for summary decision in which the justices shall be of opinion that the same is a fit subject for prosecution by indictment, and shall thereupon bind the complainant and witnesses in recognizance to prosecute and give evidence at the assizes or sessions of the peace, every such Court is hereby authorized and empowered at its discretion to

Parties bound by recognizance to prosecute or give evidence on bills of indictment for common assaults to be allowed costs as in cases of felony.

order payment of the costs and expenses of the prosecutor and witnesses so appearing before such Court under such recognizance, together with compensation for their trouble and loss of time, in the same manner as Courts are authorized and empowered to order the same in cases of felony.

Note.—This section empowers any Court in every case of assault brought before justices for summary decision under the 9 Geo. 4, c. 31, s. 27, in which the justices think the case is a fit subject for prosecution by indictment, and bind over the prosecutor and witnesses, to order payment of the costs in the same manner as in cases of felony. This is a beneficial provision as far as it extends; but unfortunately it does not apply to the very cases which above all others it ought to have provided for. The justices have no jurisdiction whatever to hear any case under the 9 Geo. 4, c. 31, s. 27, unless the party assaulted of his own free will elects to make complaint, and proceed under that section. *Regina* v. *Deny*, 2 L. M. & P. 230. If the party assaulted does so elect to proceed, then the justices may fine the defendant any sum not exceeding, together with costs, 5*l*. Now, it is obvious that where the assault is of a very aggravated description the party assaulted will not willingly proceed before the justices for a summary conviction, and the consequence is, that in the most aggravated cases the Court will have no power to grant any costs. The only means, by which the party assaulted can obtain the costs in any aggravated case, will be to make a complaint under the 9 Geo. 4, c. 31, s. 27; but then the justices will be entitled, if they think fit, summarily to convict the defendant, and cannot be compelled by the party assaulted to send the case to the sessions or assizes, and if the justices do so convict, the party assaulted can neither indict the defendant nor bring an action against him afterwards.

The power conferred on justices by the 9 Geo. 4, c. 31, s. 27, has been very often exercised in cases, which were never intended to be dealt with under that section. It only applies to *common* assaults, and section 29 plainly shews not even to all cases, which in point of law may fall within that designation; and yet assaults on peace officers and constables in the execution of their duty, and extremely aggravated assaults have frequently been summarily dealt with. A year ago two men were summarily convicted under it for having attacked a feeble unoffending man, thrown him down three times on the ground, and broken his leg so that the bones protruded through the skin, and the wound proved fatal after the conviction took place. It certainly never was the intention of the Legislature that such cases should be determined by justices in petty sessions.

The clause is inaccurate in three respects: It speaks of "parties *so* bound by recognizance," and yet no binding by recognizance is previously mentioned. It applies to

every case in which the justices think it a proper subject for indictment, and, therefore, includes attempts to commit felony, in which the Courts had previously authority to grant costs under the 7 Geo. 4, c. 64. And lastly, it only empowers the Court to grant costs to such witnesses as appear under recognizances, and not under subpœna.

So much of 7 Geo. 4, c. 64, as empowers quarter sessions to make regulations as to costs and expenses, repealed.

IV. So much of the said act of the seventh year of King George the Fourth as empowers the justices of the peace of any county, riding, or division, or of any liberty, franchise, city, town, or place chargeable with costs and expenses as therein mentioned, in quarter sessions assembled, to establish and alter regulations as to the rate of any costs and expenses to be allowed by virtue of that act, shall be repealed: provided always, that all such regulations in force at the time of the passing of this act shall continue in force until revoked, or until regulations in relation to the matter thereof are made under the powers of this act.

Note.—This section effects a great improvement. A judicial officer ought to have nothing whatever to do with the ascertainment or apportionment of costs. The only authority that a judicial officer should have with respect to costs should be limited to that which it is absolutely essential to vest in him, namely, the power to determine upon the hearing of any case, whether or not the costs should be allowed. The scale on which such costs should be allowed, and the taxation of the bill in every case should rest with other parties.

Secretary of State may make regulations as to costs, expenses, and compensations, and certificates to be granted by examining magistrates.

V. It shall be lawful for one of her Majesty's principal Secretaries of State to revoke any regulations made under the provision hereinbefore repealed, and to make regulations as to the rates or scales of payment of all or any costs, expenses, and compensations to be allowed or ordered to be paid under the said act or any other act or this act to prosecutors and witnesses, and to persons attending the Court in obedience to any recognizance or subpœna, in cases of criminal prosecutions, and (except as hereinafter mentioned) to persons who may have been active in or towards the apprehension of persons charged with offences, and also regulations as to the rates or scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the expenses of any prosecutor, or witness or witnesses for the prosecution, or other person, of attending before such magistrate or magistrates, and of any compensation for trouble and loss of time therein, in any case where any Court or Judge is empowered under the said act of the seventh year of King George the Fourth or any other act or this act to order payment of such expenses or compensation, and concerning the forms of such certificates and the details or particulars to be

inserted therein of the expenses, trouble, and loss of time to which such certificates relate, and it shall be lawful for one of her Majesty's principal Secretaries of State from time to time to alter any such regulations, or make new regulations in relation to any of the matters aforesaid, and such regulations for the time being shall be binding on all Courts and persons whomsoever.

Note.—This section empowers one of the Secretaries of State to revoke any regulations made under the 7 Geo. 4, c. 64, and to make regulations as to the rates of payment of all or any costs, expenses, and compensations under the 7 Geo. 4, c. 64, or any other act or this act, to prosecutors and witnesses, and to persons attending the Court in obedience to any recognizance or subpœna, and (except as mentioned in sec. 7), to persons, who may have been active towards the apprehension of offenders, and also regulations as to the rates, according to which certificates may be granted by the examining magistrate for attending before such magistrate, and of any compensation for trouble and loss of time therein, and concerning the forms of such certificates, and the details or particulars to be inserted therein of the expenses, trouble and loss of time, to which such certificates relate.

One of the Secretaries of State may from time to time alter any such regulations, or make new regulations in relation to any of the matters aforesaid.

Such regulations for the time being are to be binding on all Courts and persons whomsoever.

The power conferred by this section is of the most important character with reference to criminal prosecutions. Clear is it beyond any doubt that every improper acquittal has a tendency to lead to the commission of other offences. Now no one can doubt that the amount of costs allowed has a most material bearing upon this point. If a prosecution is to be well prepared, and all the evidence bearing upon the merits of the case properly laid before a jury, it can only be effected by making such an allowance of costs as will secure the attendance of the material witnesses and the due preparation of the case. If the costs are limited by a niggardly and narrow hand, the inevitable effect will be to prevent any person attending as prosecutor or witness, who can avoid it; nay more, if they do attend upon compulsion, their evidence is not very likely to be favourable to the prosecution, and occasionally, no doubt, the limited scale of their allowances will lay them open to the solicitations and corruption of the prisoner's friends.

It is a very great mistake to suppose that the majority of witnesses feel a pleasure in appearing on a trial. The majority of them are forced from their homes at great inconvenience, compelled to hang about the Court hour after hour, and subjected, not unfrequently, to very unpleasant treatment in the witness box. Such persons ought not to

be paid on a narrow and confined scale. Again, a witness who is compelled to attend in a criminal prosecution, is just as much an officer acting on behalf of the public as the policeman, who apprehends, or the Judge, who tries the prisoner. It is a fallacy to look upon him as alone interested in the case. The interest is that of the public; for it is for the sake of the public that every criminal prosecution is instituted, and it is on this ground that the costs of prosecutions are defrayed out of the funds of the public. If it is expedient to prosecute at all—a matter no one will question—it is assuredly expedient to prosecute in such a manner as to secure the end, for which the prosecution is instituted. And this end will never be obtained by narrow allowances. For years my attention has been directed to this subject, case after case have I seen break down solely for want of proper prosecution. In some instances, because neither counsel nor attorney have been allowed. In others, because the allowance to the attorney was so niggardly that he could not, except at his own loss, take the proper measures for preparing the case for trial.

This section affords a very proper opportunity for instituting a better order of things. Let the Secretary of State call on the clerks of assize and of the peace for their opinion as to the scale of remuneration to be allowed, and let the opinion of some attorneys, who have had extensive criminal practice, be obtained as to the rates of allowances, and it cannot be doubted that a proper system of remuneration may be established.

One thing, however, must not be lost sight of. It is impossible to fix one invariable scale applicable to all cases. There *must* be a discretion vested in the clerk of assize or clerk of the peace, or elsewhere, to meet peculiar cases. A fixed scale of so much a mile may be very well in the case of witnesses in general, but it cannot apply to the case of a bedridden witness, whom it may be absolutely essential to bring into Court. Other examples will suggest themselves to any man's mind. Plans, models, experiments, &c. must sometimes be made, and no fixed scale can by any ingenuity be appropriated to all such cases.

A very important question here presents itself, namely, whether counsel or attorney, or both, ought to be employed in every case, and I am most clearly of opinion that they ought. A Judge has his own peculiar functions to perform, and it is quite inconsistent with his position that he should have to examine the witnesses on the part of the prosecution: still more is it out of character that a Judge should have to answer the defence set up by a prisoner or his counsel, to cross-examine the witnesses called for the defence, and so forth. It is plain, therefore, that counsel ought to be employed to conduct the prosecution. If that be so, counsel ought to be so instructed as to be able to be *really serviceable* in the case. If the depositions are his only instructions, it is obvious that they will frequently

afford a very inadequate means of knowledge. Very often they are insufficient for the purpose of conducting the prosecution, as they are silent as to facts most material to the case, and as they now only contain the evidence against the prisoner, they can by no possibility afford counsel any means of knowing or meeting any defence that may be put forward on the part of the prisoner. Frequently also in the course of a trial it becomes material to obtain information as to some fact, and if a counsel has no attorney to apply to, he has no means of ascertaining it at all. The result plainly is, that both counsel and attorney must be employed, if prosecutions are to be so conducted as to bring the case properly before the jury. In any regulations, therefore, that may be made under this act, it is to be hoped that the employment of both counsel and attorney in every case will be rendered compulsory.

Some regulation ought also to be made as to the mode of employing attorneys, as there can be no doubt that at present very improper practices are resorted to by low attorneys, through the police and otherwise, to obtain the conduct of prosecutions. The best check to such practices would be to require the committing magistrate, at the time of the commitment, to inquire of the prosecutor, whether he intended to employ an attorney, and to write the name of any attorney the prosecutor might name on the depositions; and if the prosecutor named no attorney, or the case was one where no one, who could properly be considered as a prosecutor, appeared, that the magistrate should at the time appoint some attorney to conduct the prosecution, and write his name on the depositions, and that no other attorney should be allowed any costs, unless the Court were satisfied that there was reasonable ground for his conducting the prosecution instead of the attorney so named.

Expenses and compensations to be ascertained according to such regulation, and magistrate's certificate not to be conclusive.

VI. Where any Court or Judge empowered under the said act of the seventh year of King George the Fourth, or under any other act or this act, in this behalf, shall order payment to any prosecutor, or witness or witnesses for the prosecution, or to any person attending the Court in obedience to any recognizance or subpœna, in the case of any prosecution for felony or any misdemeanor or offence, of any costs or expenses incurred, or of any compensation for trouble or loss of time, or order payment (except as hereinafter mentioned) to any person, who may appear to have been active in or towards the apprehension of any person charged with any offence, of compensation for expenses, exertions, and loss of time in or towards such apprehension, the amount of such costs, expenses or compensation *shall be ascertained by the proper officer* of the Court according to the regulations made under this act; and where the expenses and compensation in respect of attending before any examining magistrate or magistrates are so ordered to be paid, such expenses and compensa-

tion shall also be ascertained by the proper officer of the Court according to such regulations, but the amount thereof as so ascertained shall not exceed the amount mentioned in the certificate of the examining magistrate or magistrates, and, save as aforesaid, the certificate of any examining magistrate or magistrates shall not be conclusive as to the amount to be allowed for expenses of attendance before him or them, or for compensation for trouble or loss of time therein.

Note.—By this section, where any costs or expenses, or any compensation for trouble or loss of time, or compensation for expenses, exertions, and loss of time towards the apprehension of any person are ordered, the amount of such costs, expenses, or compensation is to be ascertained by the proper officer of the Court, according to the regulations *made under this act.*

This clause contains a strange mistake. By sec. 4, all the regulations made under the 7 Geo. 4, c. 64, are to remain in force until revoked, or until regulations in relation to the matter thereof are made under the provisions of this act; and under sec. 5, it is plain that the Secretary of State may exercise a discretion as to revoking all or any of the regulations made under the 7 Geo. 4, c. 64; and yet this sixth section *requires* all costs to be ascertained under the regulations *made under this act.* The only mode that occurs of obviating this difficulty is to ascertain the costs, in the same manner as they have hitherto been ascertained, until the Secretary of State makes new regulations, and then to ascertain them according to such new regulations.

This clause is however very valuable, inasmuch as it directs the costs to be ascertained by the proper officer of the Court; it was unquestionably the clear intention of the 7 Geo. 4, c. 64, s. 22, that that should always be done, and at the Central Criminal Court and the assizes it has always been so done. Some magistrates have, however, taken upon themselves at the sessions, in one county at least, to inspect and tax each attorney's bill of costs. This practice is clearly rendered illegal by this section, and the costs in future *must* be taxed by the Clerk of the Peace or his deputy, as the clause is clearly *imperative.*

By this section the expenses and compensation of attending before the examining magistrate are to be ascertained by the proper officer of the Court, according to the regulations made under this act; but the amount is not to exceed the amount mentioned in the certificate of such magistrate, and, save as aforesaid, such certificate is not to be conclusive.

If this provision is intended to prevent excessive charges being allowed by magistrates, and the certificate is to be taken *primâ facie* to be correct until some ground appear to doubt its propriety, this clause may operate beneficially;

but if in every case the officer is to inquire into all the proceedings that took place before the justice, and ascertain whether the matters allowed actually took place, the burthen thrown on such officer will be one, which he will have very inadequate means of satisfactorily discharging. The magistrate of course knows what takes place before him,—the officer can only learn it by some indirect means.

Act not to interfere with payments in respect of extraordinary courage, diligence, and exertions.

VII. Provided always, that nothing in this act or in any regulations under this act shall interfere with or affect the power of any Court to order payment to any person, who may appear to such Court to have shewn extraordinary courage, diligence, or exertion in or towards any such apprehension as hereinbefore mentioned, of such sum as such Court shall think reasonable and adjudge to be paid in respect of such extraordinary courage, diligence, or exertion.

Note.—This section preserves to the Court the power created by the 7 Geo. 4, c. 64, ss. 28 & 29 of ordering rewards in respect of extraordinary courage, diligence, or exertion towards the apprehension of the offenders therein mentioned.

Powers given to Judges by 7 Geo. 4, c. 64, to order payments in respect of the apprehension of certain offenders extended to Courts of sessions of the peace.

VIII. And whereas by the said act of the seventh year of King George the Fourth any Court of oyer and terminer and gaol delivery, and other Courts therein mentioned, are empowered to order compensation to be paid to persons who shall appear to the Court to have been active in or towards the apprehension of any person charged with murder or with any other of the crimes therein mentioned: and whereas it is expedient to extend such power to Courts of sessions of the peace: be it enacted that when any person appears to any Court of sessions of the peace to have been active in or towards the apprehension of any party charged with any of the offences in the said enactment mentioned which such sessions may have power to try, such Court of sessions shall have power to order compensation to be paid to such person in the same manner as the other Courts in the said enactment mentioned; provided that such compensation to any one person shall not exceed the sum of five pounds, and that every order for payment to any person of such compensation be made out and delivered by the proper officer of the Court unto such person without fee or payment for the same.

Note.—This section very properly extends the power of ordering rewards in certain cases to the Courts of sessions.

It is obvious that in whatever Court a case is tried, that Court ought to have authority to order rewards to parties, who have conducted themselves meritoriously in the prosecution.

IX. And whereas it may be expedient to authorize the payment of clerks of the peace and such other clerks as hereinafter mentioned by salaries instead of fees: be it enacted, that it shall be lawful for the justices of the peace at their general or quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, notice being given at the preceding quarter sessions that a motion will be made for such purpose, and the council or other governing body in every borough in England and Wales, from time to time, if they see fit so to do, to recommend to one of her Majesty's principal Secretaries of State that the clerks of the peace, the clerks of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid, be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries, by virtue of any order made under this act or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid; and every such recommendation being signed by the chairman of the Court of general or quarter sessions, or the mayor or other head officer of the borough, shall be transmitted to the Secretary of State; and it shall be lawful for such Secretary of State, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks to which such recommendation refers be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary: and such Secretary of State shall cause copies of every order made under this enactment affecting any clerk of the peace, or any clerks of special sessions or petty sessions, or clerks to the justices within the district of any clerk of the peace, to be transmitted to such clerk of the peace, to be by him distributed, where occasion shall require, to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate or rate in the nature of a county rate made in the county, riding, division, or liberty, or out of the borough fund of the borough, as the case may be, for or in which such clerk of the peace or other clerk to whom the same is payable is appointed or acts: provided always, that in fixing the amount of any salary to be paid

Clerks of the peace, &c., may be paid by salaries in lieu of fees.

to any clerk of the peace or other clerk appointed before the passing of this act regard shall be had to the tenure of his office and to his rights in respect thereof, but no clerk of the peace or other such clerk as aforesaid appointed after the passing of this act shall be entitled to any compensation on account of any reduction of his emoluments occasioned by any order made under this enactment: provided also, that no order shall be made in pursuance of any recommendation of the council or governing body of any borough in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough at a meeting of such justices approve of such recommendation, and such approval be certified to such Secretary of State, under the hand of the chairman of such meeting.

Note.—By this section, the justices of the peace at their general or quarter sessions, notice of such motion having been given at the preceding sessions, and the council or other governing body in every borough, may, from time to time, if they see fit, recommend to one of the Secretaries of State that the clerks of the peace, the clerks of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks, be paid by salaries in lieu of fees and other payments, or where any such clerks are paid by salaries by virtue of any order made under this act, or otherwise, may recommend that the amounts of all or any of the salaries for the time being payable may be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, may state the amount of salary, which in the opinion of such justices, council, or governing body should be paid in each case.

Every such recommendation, being signed by the chairman of the sessions, the mayor, or other head officer of the borough, is to be transmitted to the Secretary of State.

Such Secretary of State, when any such recommendation is so made to him, may, by order under his hand, if he so think fit, direct that all or any of the clerks, to which such recommendation refers, be paid by salary, and may fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or may direct that any such clerk for the time being paid by salary, be paid by fees in lieu of salary.

Such Secretary of State is to cause copies of every order made under this section to be transmitted to the clerk of the peace, to be by him distributed, where occasion shall require, to such other clerks.

The salary for the time being payable to any such clerk under any such order, is to be paid out of the county rate, or rate in the nature of a county rate.

In fixing the amount of salary to be paid to any clerk of the peace or other clerk appointed before the passing of this act, regard is to be had to the tenure of his office, and to his rights in respect thereof.

But no clerk of the peace or other such clerk, appointed after the passing of this act, is to be entitled to any compensation on account of any reduction of his emoluments occasioned by any order made under this section.

No order is to be made in pursuance of any recommendation of any council or governing body of any borough in relation to any such clerk other than the clerk of the peace for such borough, unless the justices of the peace of such borough, at a meeting of such justices, approve of such recommendation, and certify the same under the hand of the chairman to the Secretary of State.

Very little care seems to have been taken of the interests of the clerks to be affected by this section. They are given no audience before the persons who are to decide upon their salaries. No average amount of receipts for any number of years is to be taken, and they have no appeal against any decision, however erroneous, as to the amount they are to receive.

The tenure of the office of the clerk of the peace is by the 1 Wm. 3, sess. 1, c. 21, s. 5, "for so long time only as such clerk of the peace shall well demean himself in his said office;" and in the great case of *Harcourt* v. *Fox*, 1 Shower, 506, it was held that he has an estate for life in his office, and determinable only upon misbehaviour. But, on the other hand, a clerk to the justices in petty sessions has only an office during pleasure, and may be dismissed summarily, and without any cause assigned. *Ex parte Sandys*, 4 B. & Ad. 862. The amount of salary, therefore, regard being had to the tenure of their respective offices, will very materially differ in the case of a clerk of the peace and a clerk to the justices.

Certain business may be excepted in fixing the salaries.

X. Provided that any such Court of sessions, or council, or governing body may, where they see fit, recommend that any description (to be specified in the recommendation) of the business of any clerk whom they may recommend to be paid by salary should not be included in fixing the amount of such salary, but that such clerk should be remunerated for the same by such fees or other payments as may be payable to him in respect thereof; and where any order is made by the Secretary of State in pursuance of such recommendation as last aforesaid, such clerk shall be entitled to receive, for his own use, the like fees or payments in respect of the business in such recommendation specified in this behalf as he would be so entitled to receive if not paid by salary; and, save as aforesaid, where any clerk is paid by salary under any order made by virtue of this act, such salary shall include and be deemed the remuneration for all business which

such clerk may, by reason of his office, be called on to perform; and no other payment shall be made for any such business, or for or to a deputy of any such clerk.

Note.—This section enables the sessions, council, or other governing body of a borough, to recommend that any description of the business of any clerk, who may be paid by salary, should not be included in the amount of salary, but that the clerk should receive the fees and payments in respect thereof, and where any order is made by the Secretary of State in pursuance of such recommendation, the clerk is to be entitled to receive such fees and payments for his own use.

With this exception, where any clerk is paid by salary, such salary is to be a remuneration for all business, which such clerk may, by reason of his office, be called upon to perform, and no other payment is to be made for any such business, or for or to a deputy of any such clerk.

Clerks paid by salaries to account for fees.

XI. Save as hereinbefore provided, all the fees, which any such clerk as aforesaid would have been for the time being entitled to receive to his own use if such order had not been made, shall, so long as any order for payment of such clerk by salary in lieu of fees is in force, be by him received and paid in any county, riding, division, or liberty, to the treasurer in aid of the county rate or rate in the nature of a county rate of such county, riding, division, or liberty, and in any borough, to the treasurer in aid of the borough fund, and such fees shall be accounted for from time to time in such manner and under such regulations as the justices at quarter sessions, or in any borough the council or other governing body, may direct.

Note.—With the exception mentioned in the last section, all the fees, which any such clerk would have been entitled to receive, are to be received and paid by such clerk in any county, riding, division, or liberty to the treasurer in aid of the county rate or rate in the nature of a county rate, and in any borough to the treasurer in aid of the borough fund, and such fees are to be accounted for from time to time in such manner as the sessions, council, or other governing body direct.

Fees may be remitted by justices.

XII. Where any clerk is paid by salary by virtue of any order made under this act, any justices or justice before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk under this act, or before whom any person is summoned for non-payment of any such fee, may remit

such fee in whole or in part for poverty or other reasonable cause, in their or his discretion; and in every such case the justices or justice by whom any fee is wholly or in part remitted shall cause an entry to be made, in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted, and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom.

Note.—Where any clerk is paid by a salary under this act, any justices or justice, before whom any proceeding is had, whereon a fee is payable, which would be accounted for by such clerk under this act, or before whom any person is summoned for nonpayment of such fee, may remit such fee in whole or in part for poverty or other reasonable cause, in their or his discretion.

An entry is to be made and signed by the justices of the nature and amount of the fees remitted, and of the reason of such remission; and such entry is to be a sufficient voucher to discharge such clerk.

This section introduces an excellent provision. Before this act it constantly occurred that the party against whom a decision was made was too poor to pay the costs of the proceedings, and a fine proportionate to the offence, and magistrates were in the habit of inflicting a nominal fine, because the costs of the proceedings were sufficiently heavy to punish the offender as much as he deserved. It is much more appropriate that the fine should be imposed with reference to the nature of the offence, even should it then become proper to remit the fees for the proceedings before the magistrates.

So much of 4 & 5 Wm. 4, c. 36, as restrains justices of London, &c. from trying certain offences, &c., repealed.

XIII. And whereas by the act of the session holden in the fourth and fifth years of King William the Fourth, chapter thirty-six, it was enacted, that the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, should not, at their respective general or quarter sessions of the peace, or any adjournment thereof, try any person or persons charged with any of the offences therein mentioned committed or alleged to be committed within the limits of that act: be it enacted, that the said recited enactment shall be repealed: provided always, that such repeal shall not be construed to give authority to the said justices of the peace to try any person or persons for any offence which the justices of the peace acting in and for any county, riding, division, or liberty are restrained from trying under the act of the session holden in the fifth and sixth years of her Majesty, chapter thirty-eight.

Such repeal not to give power to try offences restrained from being tried under 5 & 6 Vict. c. 38.

Note.—This section places the general and quarter sessions of the peace holden in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey precisely in the same position as to the jurisdiction to try prisoners as the general and quarter sessions of any other county under the 5 & 6 Vict. c. 38.

Deputy to assistant Judge of the Middlesex session need not be in the commission of the peace.

XIV. So much of the act of the session holden in the seventh and eighth year of her Majesty as requires that any person to be appointed a deputy to the assistant Judge of the Court of the sessions of the peace for the county of Middlesex should be in the commission of the peace for the said county, and qualified by law to act as a justice of the peace, shall be repealed; but any person, being a serjeant or barrister at law of not less than ten years' standing, may, in the cases and with the allowance and in the manner therein mentioned, be appointed such deputy.

As to powers of Court of quarter or general sessions for Middlesex for dividing such sessions.

When power exercised the assistant Judge to appoint a deputy to preside as chairman with the justices appointed to sit apart.

XV. The Court of quarter or general sessions or adjourned session of the peace for the county of Middlesex shall possess the same powers for dividing such Court of quarter or general or adjourned sessions as are now possessed by the Courts of quarter and general and adjourned sessions of the peace in counties in which there is an order in force for the appointment of a permanent chairman and deputy chairman; and whensoever such Court shall exercise such power the assistant judge shall appoint a person qualified to act as deputy assistant judge to preside as chairman with the justices who shall be appointed to sit apart: provided always that the name of the person who shall be so appointed shall at some previous time have been transmitted to and approved of by one of her Majesty's principal secretaries of state as a fit and proper person to be from time to time appointed as such deputy assistant judge.

Presence of one of the justices so set apart not essential to formation of Court.

XVI. The presence of one of the justices so as aforesaid set apart shall not be essential to the formation of the Court in which such deputy assistant judge shall preside, but the jurisdiction of such justices shall not be in any way lessened by such appointment.

So much of 9 Geo. 4, c. 43, and 6 & 7 Wm. 4, c. 12, as exempts Middlesex repealed.

XVII. So much of an act of the ninth year of King George the Fourth, chapter forty-three, and of an act of the session holden in the sixth and seventh years of King William the Fourth, chapter twelve, as enacts that nothing therein contained shall extend to the county of Middlesex, shall be repealed, and the said acts shall be construed and take effect as if the county of Middlesex had not been excepted from the operation thereof.

Note.—The statutes referred to relate to the formation and alteration of divisions for holding special sessions, &c.

XVIII. And whereas by section thirteen of the act of the session holden in the eleventh and twelfth years of her Majesty, chapter forty-two, provision is made for indorsing such warrants as therein mentioned by any officer within any of the Isles of Guernsey, Jersey, Alderney, and Sark, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and other provisions are made in the same act, and in the act of the same year of her Majesty, chapter forty-three, by reference to the enactment of the said section, and doubts have arisen by whom warrants should be indorsed in the said isles pursuant to the said provisions: be it enacted, that the bailiffs of Jersey and Guernsey respectively, or in their respective absence the lieutenant bailiffs of such islands respectively, within their respective bailiwicks or jurisdictions, the judge of Alderney, or in his absence any jurat of such island within such island, and the seneschal of Sark, or in his absence his deputy within such island, shall have all such power and authority to indorse warrants as by the said acts respectively is given or expressed or intended to be given to any officer within any of such isles having jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and for such purpose shall have authority to administer an oath, and all the provisions of the said acts shall be construed as if the officers authorized to indorse warrants by this enactment had been so authorized by the said section of the first mentioned act of the eleventh and twelfth years of her Majesty.

11 & 12 Vict. cc. 42 & 43.

By whom warrants to be backed in the Channel Islands.

XIX. Whenever any justice or justices of the peace, or coroner acting for any county of a city or county of a town corporate within which her Majesty has not been pleased for five years next before the passing of this act to direct a commission of oyer and terminer and gaol delivery to be executed, and until her Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within the same, shall commit for safe custody to the gaol or house of correction of such county of a city or town any person charged with any *offence committed* within the limits of such county of a city or town not triable at the Court of quarter sessions of the said county of a city or county of a town, the commitment shall specify that such person is committed pursuant to this act, and the recognizances to appear to prosecute and give evidence taken by such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the Court of oyer and terminer and gaol delivery for the next adjoining county; and whenever any such person shall be so committed, the keeper of such gaol or house of correction shall deliver to the Judges of assize for such next adjoining county a calendar of all prisoners in his custody so committed, in the same way that the sheriff of the county would be by law required to do so if such prisoners had been committed to the common gaol of such adjoining county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed, shall deliver or cause to be delivered to the proper officer of the Court the several examinations, informa-

In certain counties of cities and towns prisoners may be committed and tried at assizes held for adjoining county.

tions, evidence, recognizances, and inquisitions relative to such persons at the time and in the manner that would be required in case such persons had been committed to the gaol of such adjoining county by a justice or justices, or coroner, having authority so to commit, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such adjoining county as in the case of persons charged with offences of the like nature committed within such county.

Note.—This clause is inaccurate in applying only to persons "charged with any offence committed within the limits" of the county of a city, &c. There are now many offences triable only at the assizes which are not included in this clause; *e. g.* forgery and uttering, and bigamy committed out of such county, &c., but for which the prisoner is apprehended or in custody in such county. So also offences begun, but not completed within such county, and *vice versâ*.

Justices to declare when gaols or houses of correction are fit prisons for persons committed for trial.

XX. It shall be lawful for the justices of the peace, at their general or quarter sessions for any county, riding, or division, by order made for that purpose, to declare that any gaol or house of correction for such county, riding, or division is a fit prison for persons committed for trial at the assizes for such county, or for the county of such riding or division; and every such order shall be signed by the chairman of such sessions, and transmitted to one of her Majesty's principal Secretaries of State; and in case such Secretary of State see fit to approve such order, then, after the approval thereof under the hand of such Secretary of State, it shall be lawful for any justice or justices of the peace, or coroner, acting for such county, riding, or division, to commit for safe custody for trial at the next assizes, to such gaol or house of correction, any person charged with any offence triable at the assizes for such county, or for the county of such riding or division; and the commitment shall specify that such person is committed under the authority of this act; and the recognizances to appear to prosecute and give evidence taken by such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the Court of oyer and terminer and gaol delivery for the county; and the keeper of such gaol or house of correction shall deliver to the Judges of assize a calendar of all prisoners in custody for trial at such assizes, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of such county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed shall deliver or cause to be delivered to the proper officer of the Court of assize the several examinations, informations, evidence,

recognizances, and inquisitions relative to such persons at the time and in the manner that would be required in case such persons had been committed for trial as aforesaid to such common gaol, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such county as in the case of persons so committed to such common gaol.

Prisoners so committed to be removed to county gaol previous to trial.

XXI. All persons who may under the authority of this act be committed to the gaol or house of correction of any county of a city or county of a town corporate for trial at the assizes to be holden for the next adjoining county, or to any gaol (other than the common gaol of the county) or house of correction for any county, riding, or division for trial at the assizes for such county, or for the county of such riding or division, shall in due time, without writ of habeas corpus or other writ for that purpose, be removed by the gaoler or keeper of such gaol or house of correction, with their commitments and detainers, to the common gaol of such county, in order that they may be tried at the assizes to be holden for such county, and such removal shall not be deemed or taken to be an escape.

Prisoners while under removal to be deemed in proper legal custody.

XXII. Every prisoner so removed shall, for and during the time of such removal, and for and during the time of his being removed back to the gaol or house of correction from which he may have been brought, when and as often as he shall for any reason be so removed back, and also for and during such time as he may be detained in the county gaol, and until he shall be delivered by due course of law, be to all intents and purposes deemed and considered to be in the proper legal custody, notwithstanding he may in effecting such removal have been taken or detained out of the jurisdiction of the county of a city or town, or out of the jurisdiction of the county, riding, or division, to the gaol or house of correction of which he may have been originally committed, into any other jurisdiction, or out of the county to the common gaol of which he is removed into or through any other county or division of a county; and no action or other proceeding shall or may be maintained by such prisoner, or by any other person, against the gaoler or keeper of the gaol or house of correction from which such prisoner is removed, or against the gaoler or keeper of the common gaol of the county, by reason or in consequence of such prisoner having been taken out of the jurisdiction of such county of a city or town, county, riding, or division, from the gaol or house of correction of which such prisoner is removed, into any other jurisdiction, or out of such county to the common gaol of which he is removed into or through any other county or division of a county.

The provisions of 38 Geo. 3, c. 52, and 51 Geo. 3, c. 100, as to execution of sentences.

XXIII. All the provisions of the act of the fifty-first year of King George the Third, chapter one hundred, applicable to convictions in pursuance of the provisions of the act of the thirty-eighth year of King George the Third, chapter fifty-two, and to the execution of the sentences passed upon any convicts on such

and as to costs, extended to this act.

convictions, and all the provisions of the said acts respectively concerning the payment of expenses, shall be applicable in all cases of persons who may be tried in or removed for trial to any adjoining county in pursuance of the provisions of this act, in like manner as in cases of persons tried in or removed for trial to any adjoining county in pursuance of the provisions of the said act of the thirty-eighth year of King George the Third.

What to be deemed the next adjoining county.

XXIV. For the purposes of this act the counties named in the second column of schedule (C.) to the act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, shall be considered next adjoining the counties of cities and towns corporate in the first column of the same schedule in conjunction with which they are respectively named.

Note.—The Municipal Corporation Act contains the following "Schedule (C.)"

Berwick-upon-Tweed.	Northumberland.
Bristol.	Gloucestershire.
Chester.	Cheshire.
Exeter.	Devonshire.
Kingston-upon-Hull.	Yorkshire.
Newcastle-upon-Tyne.	Northumberland.

Extent of act.

XXV. This act shall not extend to Ireland or to Scotland.

PRECEDENTS OF INDICTMENTS.

For being found by Night Armed with intent to Break into a House, &c., and commit a Felony therein. 14 & 15 *Vict. c.* 19, *s.* 1.

No. 1.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, about the hour of eleven in the night of the same day, at the parish of *Cheltenham*, in the county of *Gloucester*, A. B. was found by night as aforesaid then and there being armed with a certain dangerous [*dangerous or offensive*] weapon, [*any weapon or instrument whatsoever*], to wit, *a gun*, with intent then and there by night as aforesaid to break [*break or enter*] into the dwelling-house [*any dwelling-house or other building whatsoever*] of one C. D. there situate, and then and there by night as aforesaid, in the said *dwelling-house*, feloniously to steal, take, and carry away the goods and chattels of the said C. D. then and there being in the said dwelling-house. Against the form of the statute in such case made and provided.

For being found by Night in possession of Implements of House-breaking. 14 & 15 *Vict. c.* 19, *s.* 1.

No. 2.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, about the hour of eleven in the night of the same day, at the parish of *Cheltenham*, in the county of *Gloucester*, A. B. was found by night as aforesaid then and there having in his possession, without lawful excuse, a certain implement of housebreaking [*any picklock key, crow, jack, bit, or other implement of housebreaking*], to wit, *a crow*. Against the form of the statute in such case made and provided.

For being found by Night with a Disguised Face with intent to commit Felony. 14 & 15 *Vict. c.* 19, *s.* 1.

No. 3.

Somersetshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the

year of our Lord 1852, about the hour of eleven in the night of the same day, at the parish of *Swindon*, in the county of *Somerset*, A. B. was found by night as aforesaid then and there having his face blackened [*blackened or otherwise disguised*], with intent then and there by night as aforesaid feloniously, wilfully, and of his malice aforethought, to kill and murder one C. D. [*to commit any felony*]. Against the form of the statute in such case made and provided.

For being found by Night in a House with Intent to commit a Felony therein. 14 & 15 *Vict. c.* 19, *s.* 1.

No. 4.

Yorkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, about the hour of eleven in the night of the same day, at the parish of *Filey*, in the county of *York*, A. B. was found by night as aforesaid in the dwelling-house [*dwelling-house or other building whatsoever*] of one C. D., there situate, with intent then and there by night as aforesaid in the said *dwelling-house* feloniously to steal, take, and carry away the goods and chattels of the said C. D. then and there being in the said dwelling-house [*to commit any felony therein*]. Against the form of the statute in such case made and provided.

Indictment for a Second Offence after a Previous Conviction. 14 & 15 *Vict. c.* 19, *s.* 2.

No. 5.

Gloucestershire (to wit). The jurors, &c. [*here state the second offence according to one of the preceding four Precedents*]. And the jurors aforesaid, upon their oath aforesaid, do further present that before the committing of the said misdemeanor, (to wit), on the *first* day of *May*, in the year of our Lord 1852, at, &c. [*describing the Court before which the defendant was convicted in terms to correspond with the certificate of the previous conviction intended to be given in evidence*], the said A. B. was then and there convicted of a misdemeanor against "the Act for the better prevention of Offences, 1851," [*or felony*], and which said conviction is still in full force.

For administering Chloroform, &c., with intent to commit a Felony. 14 & 15 *Vict. c.* 19, *s.* 3.

No. 6.

Derbyshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of *May*, in the year of our Lord 1852, feloniously and unlawfully did apply

[*apply or administer, or attempt to apply or administer*] to one C. D. a large quantity of a certain stupifying and overpowering drug called Laudanum [*any Chloroform, Laudanum, or other stupifying or overpowering drug, matter, or thing*], (to wit), two ounces of the said stupifying and overpowering drug called Laudanum, with intent thereby then to enable [*or assist*] the said A. B. [*such offender or any other person*] then feloniously and violently to steal, take, and carry away the monies, goods, and chattels of the said C. D., from the person and against the will of him the said C. D. [*to commit any felony*]. Against the form of the statute in such case made and provided.

For Maliciously inflicting Bodily Harm. 14 & 15 *Vict. c.* 19, *s.* 4.

No. 7.

Yorkshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of *June*, in the year of our Lord 1852, unlawfully and maliciously did inflict upon one C. D. some grievous bodily harm. Against the form of the statute in such case made and provided.

Add a Count for an Assault occasioning actual Bodily Harm.

For Maliciously Cutting, &c. 14 & 15 *Vict. c.* 19, *s.* 4.

No. 8.

Yorkshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of *June*, in the year of our Lord 1852, unlawfully and maliciously did cut [*cut, stab, or wound*] C. D. Against the form of the statute in such case made and provided.

Add a Count for an Assault occasioning actual Bodily Harm.

Malicious Acts on Railways on the First Clause of the 14 & 15 *Vict. c.* 19, *s.* 6.

No. 9.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. feloniously, wilfully, and maliciously did put [*put, place, cast, or throw*] upon [*upon or across*] a certain railway there, called "*The Great Western Railway*," a certain large piece of wood [*any wood, stone, or other matter or thing*]* with intent thereby then and there to obstruct [*obstruct, upset, overthrow, injure, or destroy*] a certain engine [*engine, tender, carriage, or truck*], then and there using the said railway [*or to endanger the safety of one D. D. then and there travelling* [travelling or being] *upon the said*

railway]. Against the form of the statute in such case made and provided.

Malicious Acts on Railways on the Second Clause of the 14 & 15 *Vict. c.* 19, *s.* 6.

No. 10.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, wilfully, and maliciously take up [*take up, remove, or displace*] a certain rail [*any rail, sleeper, or other matter or thing*] then and there belonging to a certain railway there, called "*The Great Western Railway*," with intent, *&c.* [*Conclude as in last Precedent from the Asterisk*].

Malicious Acts on Railways on the Third Clause of the 14 & 15 *Vict. c.* 19, *s.* 6.

No. 11.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, wilfully, and maliciously turn [*turn, move, or divert*] certain points [*any points or other machinery*] then and there belonging to a certain railway there, called "*The Great Western Railway*," with intent, *&c.* [*Conclude as in last Precedent but one from the Asterisk*].

Malicious Acts on Railways on the Fourth Clause of the 14 & 15 *Vict. c.* 19, *s.* 6.

No. 12.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, wilfully, and maliciously make [*make or show, hide or remove*] a certain signal [*any signal or light*] upon [*upon or near to*] a certain railway there, called "*The Great Western Railway*," with intent, &c. [*Conclude as in the last Precedent but two from the Asterisk*].

Malicious Acts on Railways on the Fifth Clause of the 14 & 15 *Vict. c.* 19, *s.* 6.

No. 13.

Berkshire (to wit). The jurors for our Lady the Queen, upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. did feloniously, wilfully, and maliciously set fire to [*do or cause to be done any other matter or thing*] a

certain carriage, then and there using a certain railway there, called "*The Great Western Railway,*" with intent thereby then and there to destroy [*obstruct, upset, overthrow, injure, or destroy*] the said carriage [*any engine, carriage, or truck, using such railway*], so then and there using the said railway as aforesaid [*or to endanger the safety of one C. D. then and there travelling* [travelling or being] *upon the said railway*]. Against the form of the statute in such case made and provided.

Malicious Acts to Railway Carriages, on the 14 *&* 15 *Vict. c.* 19, *s.* 7.

No. 14.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. feloniously, wilfully, and maliciously did cast [*cast, throw, or cause to fall or strike against, into, or upon*] upon a certain carriage [*engine, tender, carriage, or truck*], then and there used upon a certain railway there, called "*The Great Western Railway,*" a certain large piece of wood [*any wood, stone, or other matter or thing*] with intent thereby then and there to endanger the safety of one C. D., then and there being in [*in or upon*] the said carriage [*engine, tender, carriage or truck*]. Against the form of the statute in such case made and provided.

Arson, on the First Clause of the 14 *&* 15 *Vict. c.* 19, *s.* 8.

No. 15.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Goring*, in the county of *Berks*, A. B. feloniously, wilfully, and maliciously did set fire to* a certain station [*any station, engine-house, warehouse, or other building*] the property of the Great Western Railway Company, there situate, then and there belonging [*belonging or appertaining*] to a certain railway there, called "*the Great Western Railway*" [*any railway, dock, canal, or other navigation*]. Against the form of the statute in such case made and provided.

Arson, on the Second Clause of the 14 *&* 15 *Vict. c.* 19, *s.* 8.

No. 16.

Proceed as in the last Precedent to the Asterisk] a certain stack of wood [*any goods or chattels*] then and there being in [*conclude as in the last Precedent from the Asterisk where the building is within the first part of the clause; in other cases conclude*] in a certain dwelling-house [*See* 1 *Vict.*

c. 89, *s.* 3, *and* 7 *&* 8 *Vict. c.* 62, *s.* 1, *for the buildings, which are the subject of arson*] of one D. J. there situate. Against the form of the statute in such case made and provided.

For assaulting a Person apprehending Another under the 14 *&* 15 *Vict. c.* 19, *s.* 12.

No. 17.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Stroud*, in the county of *Gloucester*, A. B. did feloniously, wilfully, and maliciously, set fire to a certain building, the property of the Great Western Railway Company, there situate, then and there belonging to a certain railway there, called "The Great Western Railway." Against the form of the statute in such case made and provided, [*or state in like manner any other offence for which the party was liable to be apprehended under this act*]. And that the said A. B. was then and there found committing the said *felony* [*or misdemeanor*] by one C. D., and that the said C. D., did then and there attempt to apprehend [*apprehend or detain*] the said A. B. for the said felony [*or misdemeanor*]*, and that the said A. B. did then and there unlawfully assault [*assault or offer any violence to*] the said C. D., so then and there attempting to apprehend [*or detain*] the said A. B. for the said felony [*or misdemeanor*] as aforesaid. Against the form of the statute in such case made and provided.

For Assaulting a Person aiding Another in apprehending an Offender under the 14 *&* 15 *Vict. c.* 19, *s.* 12.

No. 18.

Proceed as in the last precedent to the Asterisk], and that one E. F. did then and there aid and assist the said C. D. to apprehend [*or detain*] the said A. B. for the felony [*or misdemeanor*] aforesaid. And that the said A. B. did then and there assault [*assault or offer any violence to*] the said E. F., so then and there acting in aid and assistance of the said C. D. in apprehending [*or detaining*] the said A. B. for the said felony [*or misdemeanor*] as aforesaid. Against the form of the statute in such case made and provided.

Against a Master or Mistress for Ill Usage of an Apprentice or Servant, on the 14 *&* 15 *Vict. c.* 11.

No. 19.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *January*, in the year of our Lord 1852, and from thence continually afterwards until and at and after the commission of the offence in this count mentioned, A. B. was the apprentice

[*apprentice or servant*] of C. D., and that the said C. D. during all the time aforesaid was legally liable to provide for the said A. B. as such apprentice [*or servant*] as aforesaid necessary food [*necessary food, clothing, or lodging*]*, and that the said C. D. not regarding his duty in that behalf unlawfully, wilfully, and without lawful excuse during all the time aforesaid did refuse [*refuse or neglect*] to provide necessary food [*clothing or lodging*] for the said A. B. so being such apprentice [*or servant*] as aforesaid*, whereby the life of the said A. B. has been endangered [*or* the health of the said A. B. has been [*or is likely to be*] permanently injured].* Against the form of the statute in such case made and provided.

Add a Count omitting the Allegation between the Second and Third Asterisks.

On the Second Clause of the same Statute.

No. 20.

Proceed as in the last Precedent to the first Asterisk.—And that the said C. D. on the *second* day of *January*, in the year aforesaid, unlawfully and maliciously did assault the said A. B. so being such apprentice [*or servant*] as aforesaid, whereby, &c. [*Conclude as in the last Precedent from the second Asterisk*].

Larceny.

No. 21.

Kent (to wit). The jurors of our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, feloniously did steal, take, and carry away one *coat* and one *hat* of the goods and chattels of C. D.

Larceny by Clerk or Servant.

No. 22.

Kent (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *June*, in the year of our Lord 1852, was clerk [*clerk or servant*] to C. D., and that the said A. B. whilst he was such *clerk* to the said C. D. as aforesaid, on the day and year aforesaid, feloniously did steal, take, and carry away *one bill of exchange for the payment of twenty pounds, and one gold watch* belonging to [*belonging to or in the possession or power of*] the said C. D. his master. Against the form of the statute in such case made and provided.

Larceny of Cattle.

No. 23.

Worcestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of

January, in the year of our Lord 1852, feloniously did steal, take, and lead away one horse [*horse, mare, gelding, colt, filly, bull, cow, ox, heifer, calf, ram, ewe, sheep, or lamb*], of the goods and chattels of C. D. Against the form of the statute in such case made and provided.

Larceny of Fixtures.

No. 24.

Yorkshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of *March*, in the year of our Lord 1852, at the parish of *Filey*, in the county of *York*, feloniously did steal, take, and carry away [*steal, or rip, cut, or break, with intent to steal*], one copper furnace [*any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material*], the property of C. D., then and there being fixed in and to the dwelling-house of the said C. D. there situate. Against the form of the statute in such case made and provided.

For stealing Bills of Exchange and other valuable Securities. 7 & 8 *Geo.* 4, *c.* 29, *s.* 5.

No. 25.

Herefordshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *tenth* day of *June*, in the year of our Lord 1852, feloniously did steal, take, and carry away one *promissory note* for the payment of twenty pounds, the property of C. D. Against the form of the statute in such case made and provided.

[*See* 14 & 15 *Vict. c.* 100, *s.* 5, *ante*, p. 11, *that the description by the name by which the instrument is usually known is sufficient; and sec.* 24, *ante*, p. 28, *that the value need not be stated*].

For Stealing Money, &c., out of Letters. 1 *Vict. c.* 36, *s.* 37.

No. 26.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B., on the *first* day of *July*, in the year of our Lord 1852, feloniously did steal, take, and carry away *one promissory note* for the payment of ten pounds [*any chattel, money, or valuable security*], the property of the Postmaster General, from and out of a certain post letter. Against the form of the statute in such case made and provided.

The Bank Notes of any Bank may be described simply as money, by 14 & 15 Vict. c. 100, s. 18, *ante*, p. 20, *e. g.* "a large sum of money, to (wit), the sum of *ten* pounds."

For Stealing, or Cutting with intent to steal Trees, &c. 7 & 8 *Geo.* 4, *c.* 29, *s.* 4.

No. 27.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Cleeve*, in the county of *Gloucester*, A. B. feloniously did steal, take, and carry away [*steal, cut, break, root up, or otherwise destroy or damage with intent to steal*] one ash tree [*the whole or any part of any tree, sapling, or shrub, or any underwood*], of a value exceeding one pound, (to wit), of the value of two pounds, the property of C. D., then and there growing in a certain park [*park, pleasure ground, garden, orchard, avenue, or any ground adjoining or belonging to any dwelling-house*] of the said C. D. there situate, [*where the tree is not stolen, but cut, &c., add,* "with intent then and there feloniously to steal, take, and carry away the same, thereby then and there doing injury to the said C. D. to an amount exceeding the sum of one pound, (to wit), to the amount of two pounds."] Against the form of the statute in such case made and provided.

[*Local description is here necessary, and the value or amount of injury must be stated, as they are of the essence of the offence*].

For Hunting Deer in inclosed Places. 7 & 8 *Geo.* 4, *c.* 29, *s.* 26.

No. 28.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that on the *first* day of *June*, in the year of our Lord 1852, at the township of *East Dean*, in the county of *Gloucester*, A. B. unlawfully, wilfully, and feloniously did course [*course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound*] a certain fallow deer, the property *of our said Lady the Queen*, then and there being [*kept or being*] in the inclosed part of a certain forest, called "*the Forest of Dean*," there situate, [*in the inclosed part of any forest, chase, or purlieu, or in any inclosed land wherein deer shall usually be kept*]. Against the form of the statute in such case made and provided.

[*Local description is here necessary*].

Receiving stolen Property as a substantive Felony.

No. 29.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, feloniously did receive one *sheep*, of the goods and chattels of C. D., before then feloniously stolen, taken, and driven away, (he the said A. B.,

at the time when he so received the said *sheep* as aforesaid, then well knowing the same to have been feloniously stolen, taken, and driven away). Against the form of the statute in such case made and provided.

Against Principal and Receiver.

No. 30.

After the conclusion of the charge against the principal.—And the jurors aforesaid upon their oath aforesaid, do further present that A. B. afterwards, on the day and year aforesaid, feloniously did receive the said goods and chattels [*or the said silver tankard, part of the said goods and chattels*], so as aforesaid feloniously stolen, taken, and carried away, (he the said A. B., at the time when he so received the said goods and chattels [*or the said silver tankard*], then well knowing the same to have been feloniously stolen, taken, and carried away). Against the form of the statute in such case made and provided.

For Embezzlement as Clerk or Servant. 7 & 8 *Geo.* 4, *c.* 29, *s.* 47.

No. 31.

Kent (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, being then clerk [*clerk or servant, or any person employed for the purpose, or in the capacity of a clerk or servant*] to C. D., did by virtue of his said employment, and whilst he was so employed as aforesaid, receive and take into his possession certain money [*any chattel, money, or valuable security*], to a large amount (to wit), to the amount of *fifteen pounds*, for [*for, or in the name, or on the account of*] the said C. D. his master, and then fraudulently and feloniously did embezzle the same [*the same or any part thereof*]. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B., then in manner and form aforesaid feloniously did steal, take, and carry away the said money, the property of the said C. D. his master, from the said C. D. his master. Against the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said A. B., afterwards (to wit), on the day and year aforesaid, being then clerk [*or servant, &c., as in the first count*] to the said C. D., did by virtue of his said last mentioned employment, and whilst he was so employed as last aforesaid, receive and take into his possession certain other money to a large amount (to wit), to the amount of *eight pounds*, for [*for or in the name, &c., as in the first count*] the said C. D. his master, and that the said A. B. afterwards and within six calendar months from the time of the committing of the said offence in the said first count mentioned, (to wit), on the day and year aforesaid, fraudu-

lently and feloniously did embezzle *the same.* And so the jurors aforesaid upon their oath aforesaid, do say that the said A. B. in manner and form last aforesaid, feloniously did steal, take, and carry away the said last mentioned money, the property of the said C. D. his master, from the said C. D. his master. Against the form of the statute in such case made and provided.

Killing Cattle with intent to Steal, &c. 7 & 8 *Geo.* 4, *c.* 29, *s.* 25.

No. 32.

Staffordshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *June,* in the year of our Lord 1852, feloniously and wilfully did kill one *sheep* of the goods and chattels of C. D., with intent then feloniously to steal, take, and carry away the carcass [*carcass or skin, or any part of the cattle so killed*] of the said *sheep.* Against the form of the statutes in such case made and provided.

Stealing, Destroying, or Concealing a Will, &c. 7 & 8 *Geo.* 4, *c.* 29, *s.* 22.

No. 33.

Staffordshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *June,* in the year of our Lord 1852, did unlawfully steal, take and carry away [*steal, or for any fraudulent purpose destroy or conceal*] a certain will [*will, codicil, or other testamentary instrument*] of one J. N. relating to real estate [*real or personal estate, or both*], (the said J. N. then being alive) [*or dead*]. Against the form of the statute in such case made and provided.

Where a will is destroyed or concealed for a fraudulent purpose, it would be better to state the purpose. Reg. v. *Morris,* 9 *C.* & *P.* 89. *It may be stated thus,* "did unlawfully destroy [*or conceal*] a certain will of one J. N., relating to real estate (the said J. N. then being dead), for the purpose of fraudulently depriving one C. D. of a certain real estate, which was devised to him the said C. D. in and by the said will."

False Pretences.

No. 34.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that long before and at the time of committing the offence hereinafter mentioned, *one X. Y. was well known to one C. D., and a customer of the said C. D. in his business and trade of a grocer,* and that A. B. on the *first* day of *June,* in the year of our Lord 1852, unlawfully,

knowingly, and designedly, did falsely pretend to the said C. D., that *he the said A. B. then was the servant of X. Y., (meaning the said X. Y.), and that he the said A. B. was then sent by X. Y. (meaning the said X. Y.), to the said C. D. for five pounds of sugar.* By means of which said false pretence, the said A. B. did then unlawfully obtain from the said C. D. five pounds weight of sugar, of the goods and chattels of the said C. D. with intent to defraud (*a*). Whereas in truth and in fact *the said A. B. was not then the servant of the said X. Y. And whereas in truth and in fact the said A. B. was not then sent by the said X. Y. to the said C. D. for the said sugar, or for any sugar,* as he the said A. B. well knew at the time when he did so falsely pretend as aforesaid. Against the form of the statute in such case made and provided.

Note.

It is very common in these Indictments to introduce an innuendo without any prefatory averment; this course seems objectionable on the ground that such an innuendo is too large, and the form here presented seems free from any such objection.

Forgery and Uttering.

No. 35.

Middlesex (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, feloniously did forge a certain *will*, purporting to be *the last will* of one *Sarah Young*, with intent to defraud (*a*). Against the form of the statute in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present that the said A. B. on the day and year aforesaid, feloniously did offer, utter, dispose of, and put off a certain forged *will*, purporting to be *the last will* of one *Sarah Young*, with intent to defraud (*a*) (he the said A. B., at the time he so offered, uttered, disposed of, and put off the same forged *will* as aforesaid, then well knowing the same to be forged). Against the form of the statute in such case made and provided.

For Stabbing, &c., with intent to Murder. 1 *Vict. c.* 85, *s.* 2.

No. 36.

Berkshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *June*, in the year of our Lord 1852, unlawfully and feloniously did stab [*stab, cut or wound*] one C. D., with intent thereby then feloniously, wilfully, and of his malice aforethought, to kill

(*a*) 14 & 15 Vict. c. 100, s. 8, *ante*, p. 13.

and murder the said C. D. Against the form of the statute in such case made and provided.

For Rape.

No. 37.

Essex (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, violently and feloniously did make an assault in and upon one C. D. and then violently and against her will feloniously did ravish and carnally know the said C. D. Against the form of the statute in such case made and provided.

For Abusing a Child under Ten Years of Age.

No. 38.

Essex (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *June*, in the year of our Lord 1852, feloniously did unlawfully and carnally know and abuse one C. D., then being a girl under the age of ten years, to wit, of the age of eight years. Against the form of the statute in such case made and provided.

Robbery and Stabbing.

No. 39.

Herefordshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *June*, in the year of our Lord 1852, feloniously did make an assault in and upon C. D.*, and then feloniously did put the said C. D. in bodily fear and danger of his life, and then feloniously and violently did steal, take and carry away one *gold watch* of the goods and chattels of the said C. D., from the person and against the will of the said C. D., and that the said A. B. at the time when he so robbed the said C. D. as aforesaid, feloniously did stab, cut and wound the said C. D. Against the form of the statute in such case made and provided.

Assault with Intent to Rob.

No. 40.

Commence as in the last Precedent to the asterisk], with intent then feloniously and violently to steal, take, and carry away the monies, goods and chattels of the said C. D. from the person and against the will of him the said C. D. Against the form of the statute in such case made and provided.

Murder.

No. 41.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *July*, in the year of our Lord 1852, feloniously, wilfully, and of his malice aforethought, did kill and murder C. D.

Note.

[*In an Indictment against a mother for the murder of her child, in order to convict of concealing the birth, describe the deceased as*] *C. D.*, the illegitimate child of the said A. B.

Manslaughter.

No. 42.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *June*, in the year of our Lord 1852, feloniously did kill and slay C. D.

Note.

Where several are engaged as principals in the first and second degree either in murder or manslaughter, they may all be charged as committing the murder or manslaughter, as the case may be, in one of the preceding forms. And so an accessary before the fact to a murder may be charged as a principal in the same way. In Reg. v. *Chadwick, Stafford Sum. Ass.* 1850, *the prisoner was charged as principal in the murder of one Tunnicliffe, and the jury found that he was an accessary before the fact, and Williams, J., after giving the question much consideration, was quite clear that he might be so convicted upon such an indictment, under the* 11 & 12 *Vict. c.* 46, *s.* 1.

Housebreaking.

No. 43.

Worcestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Spetchley*, in the county of *Worcester*, feloniously did break and enter the dwelling-house of C. D. there situate, and then and there in the said dwelling-house feloniously did steal, take, and carry away *two coats*, of the value of five pounds, of the goods and chattels of the said C. D. Against the form of the statute in such case made and provided.

Note.

Local description is here necessary, and the value, if amounting to 5l., had better always be inserted, as the prisoner may be con-

victed on this Indictment of stealing to the value of 5l. in the dwelling-house, if the breaking into it should not be proved.

Stealing in a Dwelling-house, some Person being put in Fear.

No. 44.

Worcestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, at the parish of *Ombersley*, in the county of *Worcester*, feloniously did steal, take, and carry away one *gold watch*, of the value of 10*l.*, of the goods and chattels of C. D., then and there being in the dwelling-house of the said C. D. there situate, and that the said A. B. did then and there, at the time of committing the said felony, by a certain menace and threat then and there used by the said A. B. to the said C. D., put the said C. D., then and there being in the said dwelling-house, in bodily fear. Against the form of the statute in such case made and provided.

Note.

Local description is here necessary. If the value of the things stolen amount to 5l., the value should be stated, as the jury might acquit of the threat, and convict of stealing to the value of 5l. in the dwelling-house.

For an Assault occasioning actual bodily harm.

No. 45.

Derbyshire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *tenth* day of *May*, in the year of our Lord 1852, unlawfully did make an assault in and upon one C. D., and did then unlawfully beat, wound, and illtreat the said C. D., and did thereby then occasion actual bodily harm to the said C. D., and then did other wrongs to the said C. D. Against the form of the statute in such case made and provided.

For an indecent Assault.

No 46.

Gloucestershire (to wit). The jurors for our Lady the Queen upon their oath present that A. B. on the *first* day of *May*, in the year of our Lord 1852, unlawfully and indecently did make an assault in and upon one C. D., and did then unlawfully, indecently, and against the will of her the said C. D., pull up the clothes of her the said C. D., and did then unlawfully, indecently, and against the will of her the said C. D., put and place the hands of him the said A. B. upon and against the private parts of her the said C. D. [*stating the indecent acts which will be proved by the evidence*], and then did other wrongs to the said C. D. Against the form of the statute in such case made and provided.

Plea of Autrefois Acquit, or Convict.

No. 47.

And the said A. B. in his own proper person cometh into Court here, and having heard the said Indictment read, saith that our said Lady the Queen ought not further to prosecute [*the said second count of*] the said Indictment against him the said A. B., because he saith that heretofore, to wit, at the General Session of Oyer and Terminer of our said Lady the Queen, holden in and for the said county of M., &c., [*here describe correctly the Court before which the former acquittal or conviction took place*] he the said A. B. was lawfully acquitted [*or convicted*] of the said felony [*or misdemeanor*] in [*the said second count of*] the said indictment above specified and charged upon him. And this he the said A. B. is ready to verify. Wherefore he prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the [*said second count of the*] present indictment specified.

Note.

[*If the plea can only be pleaded to some one count, it may be in the form above given with the alterations in italics, and after the conclusion it may proceed,*] "and as to the said *first, third, and last* counts of the said Indictment, the said A. B. saith that he is not guilty of the said premises in the said *first, third, and last* counts of the said indictment above specified and charged upon him. And of this he the said A. B. puts himself upon the country."

Replication to a Plea of Autrefois Acquit or Convict.

No. 48.

And hereupon C. D. [*the clerk of arraigns or clerk of the peace*] who prosecutes for our said Lady the Queen in this behalf says that by reason of anything alleged in the said plea of the said A. B. above pleaded in bar to [*the said second count of*] the said Indictment, our said Lady the Queen ought not to be precluded from prosecuting the said [*second count of the said*] Indictment against the said A. B.; because he says, that at the said General Session [*following the terms of the plea*] the said A. B. was not lawfully acquitted [*or convicted*] of the said felony [*or misdemeanor*] in the said [*second count of the said*] Indictment specified and charged upon him, in manner and form as the said A. B. hath above in his said plea in that behalf alleged. And this he the said C. D. prays may be inquired of by the country. And the said A. B. doth the like, &c.

Note.

Where the identity of the offence is alone in question this form will suffice, but it may deserve consideration whether where the former Indictment was insufficient, and the offence the same, the replication ought not to set out the former Indictment so as to raise the question as to its validity upon the record.

CLAUSES STRUCK OUT OF THE 14 & 15 VICT. c. 100, IN THE HOUSE OF LORDS OR HOUSE OF COMMONS.

Form of indictment in cases of embezzlement.

In any indictment for embezzlement it shall be sufficient to allege that the defendant, being the clerk or servant, or a person employed for the purpose or in the capacity of a clerk or servant, as the case may be, of A. B., did fraudulently and feloniously embezzle *the sum of ten shillings*, the property of his said master; and that in any case where two or three embezzlements are charged in the same indictment it shall be sufficient, in charging such second or third embezzlement, to allege that the defendant, being the clerk or servant, or other person so employed as aforesaid, as the case may be, of the said A. B., did, within the space of six calendar months from the commission of the offence in the first count mentioned, fraudulently and feloniously embezzle *the sum of five shillings*, the property of his said master.

In an indictment for false pretences, the pretences need not be set out.

And that in any indictment for obtaining property by false pretences it shall be sufficient to allege that the defendant by false pretences unlawfully and fraudulently did obtain the money, chattel, or valuable security which shall form the subject of the charge from some person who shall be named in the said indictment, without particularly setting forth in such indictment the pretences whereby such property was obtained, or the owner of such property, and in like manner in any indictment for attempting to obtain any property by false pretences, or for receiving any property obtained by such pretences, it shall not be necessary to specify the pretences, or state the ownership of such property.

Persons charged as principals may be found guilty as accessaries after the fact.

And whereas on the trial of persons indicted for felony as principals in the commission of the offence which forms the subject-matter of the charge it often happens that such persons escape from being convicted, by reason that such persons ought to have been charged as accessaries merely to the commission of such felony: for remedy thereof be it enacted, that if on the trial of any person after the passing of this act charged as a principal in the commission of any felony it shall appear to the

jury upon the evidence that such person was not a principal in the commission of the said felony, but that he was an accessary thereto after the said felony was committed, such person shall not by reason thereof be entitled to be acquitted from the said indictment, but the jury shall be at liberty to return their verdict that such person is guilty as an accessary after the fact to the felony charged in the said indictment, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for being accessary after the fact to the felony charged in the said indictment; and no person so tried as in this clause aforesaid shall be liable to be afterwards prosecuted as an accessary after the fact to such felony upon the same facts.

Persons tried for larceny not to be acquitted if the offence turn out to be obtaining property by false pretences.

If upon the trial of any person upon any indictment upon which he may be liable to be convicted of larceny it shall be proved that he obtained the property in question in any such manner as to amount in law to obtaining property by false pretences, and not to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of unlawfully and fraudulently obtaining such property by false pretences; and thereupon such person shall be liable to be punished in the same manner as if he had been indicted for obtaining such property by false pretences; and no person tried for such larceny shall be liable afterwards to be prosecuted for obtaining the property in question by false pretences upon the same facts.

Sufficient to charge the offence in the terms of the statute creating or defining it.

Wherever the offence charged in any indictment has been or shall hereafter be created or defined by any statute, or subjected to a greater, less, or different degree of punishment by any statute, the indictment shall be sufficient to all intents and purposes whatsoever if it describe the offence in the words of the statute.

How defendants shall be called upon to plead.

Upon the arraignment of any person for any felony or misdemeanor whatsoever, such person shall not be called upon to plead "guilty" or "not guilty," but instead thereof shall be asked "whether he wishes to plead guilty, or any other plea, or to be tried," and if upon being so called upon such person shall say that he wishes to be tried, the proper officer of the Court shall enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same; and if when so called upon such person shall refuse to answer directly to the question so asked as aforesaid, it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Verdict of not guilty of

And whereas upon the trial of indictments for larceny, sacri-

lege, burglary, housebreaking, robbery, and other offences wherein a larceny is charged to have been committed, offenders often escape conviction by reason that they ought not to have been charged as principals, but as receivers of the property mentioned in the Indictment, knowing the same to have been feloniously stolen: For remedy thereof be it enacted, that if on the trial of any person after the passing of this act upon any Indictment upon which he may be liable to be convicted of larceny it shall appear to the jury that such person became possessed of the property mentioned in the Indictment, or any part thereof, under circumstances which do not amount in law to a larceny of the same, but do amount in law to a receiving of the same by such person, he well knowing the same to have been feloniously stolen, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of the offence charged in such Indictment, but is guilty of feloniously receiving the property mentioned in the Indictment, or part thereof, knowing the same to have been feloniously stolen, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an Indictment for receiving the same property, knowing the same to have been feloniously stolen; and no person so tried as is herein mentioned shall be liable to be afterwards prosecuted for receiving stolen property, knowing the same to have been stolen, upon the same facts.

stealing, but guilty of feloniously receiving, may be returned upon any Indictment on which the defendant may be liable to be convicted of larceny.

REGINA *v.* CORNELIUS UPTON AND JOSIAH GUTTERIDGE.

CENTRAL CRIMINAL COURT, AUGUST 22, 1851.

The prisoners were indicted in several counts for wilfully and maliciously placing a stone upon the North Woolwich Railway, with intent to damage, injure, and obstruct the carriages travelling upon it.

It appeared that the prisoners, who were respectively aged thirteen and fourteen, had placed a stone on the railway in such a way as to interfere with the machinery of the points, and prevent them from acting properly, so that if a train had come up at the time the stone remained as placed by the prisoners, it would have been passed off the line, and a serious accident must have been the consequence. Gutteridge held up the points whilst Upton dropped in the stone.

Wightman, J., told the jury that in order to convict the prisoners it was necessary, in the first place, to prove that they had wilfully placed the stone in the position stated upon the railway; and secondly, that it was done maliciously, and with the purpose of causing mischief. It was his duty to inform them that it was not necessary that the prisoners should have entertained any feeling of malice against the railway company, or against any person travelling upon it; it was quite enough to support the charge if the act was done with a view to some mischievous consequence or other, and if that fact was made out the jury would be justified in finding the prisoners guilty, notwithstanding their youth. They were undoubtedly very young: but persons of their age were just as well competent to form an opinion of the consequences of an act of this description as an adult person.

Ballantine for the prosecution.

Spicer for the prisoners.

Guilty,
upon the counts charging an intent to obstruct the engine.

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